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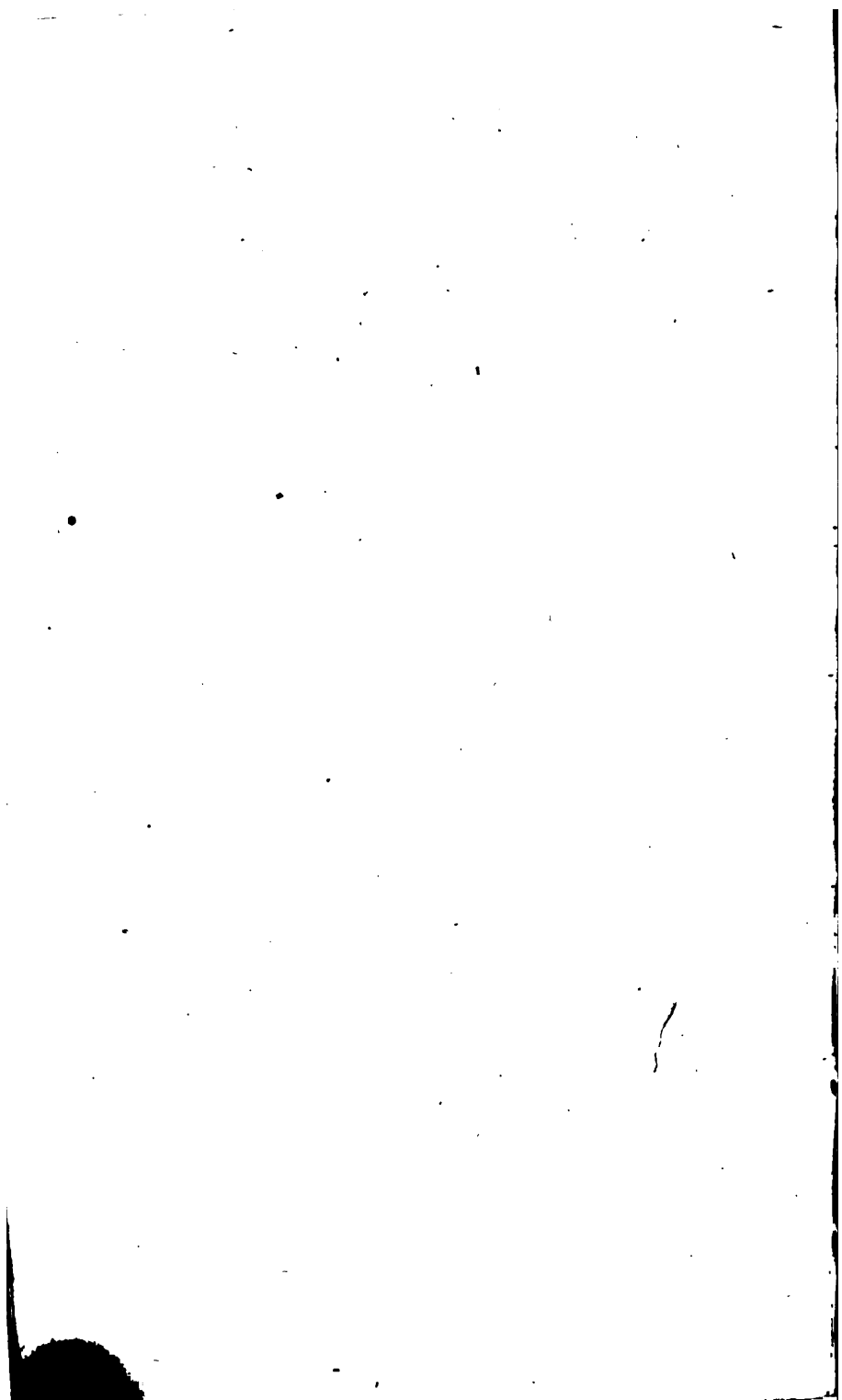
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THE

# History of Kentucky.

EXHIBITING

*AN ACCOUNT OF THE MODERN DISCOVERY; SETTLEMENT;  
PROGRESSIVE IMPROVEMENT; CIVIL AND MILITARY  
TRANSACTIONS; AND THE PRESENT STATE OF THE  
COUNTRY.*

IN TWO VOLUMES.

VOL. II.

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BY H. MARSHALL.

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1824.

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UNITED STATES OF AMERICA,

*District of Kentucky, sct.*

{SEAL.} BE IT REMEMBERED, That on the fourth day of June, in the year of our Lord one thousand eight hundred and twenty-four, and in the forty-eighth year of the independence of the United States, Humphrey Marshall, of the said district, deposited in this office, the title of a book, the right whereof he claims as author and proprietor, in the words following, to-wit:

"The History of Kentucky. Exhibiting an account of the modern discovery; settlement; progressive improvement; civil and military transactions; and present state of the country. In two volumes. By H. Marshall."

In conformity to the act of the congress of the United States, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned;" and also the act, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JOHN H. HANNA,  
Clerk of the District of Kentucky.



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002 382

# INDEX.

**NOTE.**—The figures refer to corresponding pages; where the proper name, or principal word, in the sentence will be found.

<b>A</b>			
Acers, first passed	12	Compact discussed	61
concerning slaves, private	66, 79	Convention, votes &c.	234. 246. 252
unconstitutional	212	with Virginia	176
ditto	241	one proposed to mend the	
concerning lands	464	constitution	182
Adair John defeated	41	to amend the constitution	294
indicted	409	proposed	374
Arbitrations authorized	175	Constitution, new one made	294
Adet attempts to influence the		its operation, discussed	327. 365
election	309	of U. S. quoted, &c.	256
Adams John president	206	Caucus	364
Aristides, as to France	251	Chase Judge impeached	371
Aliens, their rights	265	Chesapeake affair	435
Address to the president	284	Census	472
Academy, Winchester	289	Constables civil officers	75
appropriations for	322	Counties created—	
Allin John, his motion	411	Washington, Scott, Shelby,	12
candidate, &c.	457	Logan, Clark, Hardin	38. 66. 70
<b>B</b>		Green, Harrison	78. 129
Brown James secretary	4	Franklin, Campbell	158, 159
Brown John, sides with Jefferson	153	Bullitt, Christian, Montgo-	
Breckenridge John, of the faction	1b.	merey, Braeken, Warren, Gar-	
his resolutions	255	rard	192—194
Boundary next to Virginia	176	Pulaski, Pendleton, Livings-	
of state &c.	342. 474	ton, Henry, Cumberland, Gal-	
Bullock Edmond chosen speaker	182	latin, Muhlenberg, Ohio, Jes-	
Bryant's meeting &c.	292	samine, Henderson, Barren	286—89
Bourbon meeting &c.	325	Breckenridge, Floyd	319
Burr Col. in Frankfort	372	Wayne, Adair	336. 342
his intrigue	376. 385	Greenup, Casey, Clay, Hop-	
indicted, and acquitted	410	kins	363. 413—15
letter to W.	424	Grayson, Union,	467. 470
tried and acquitted in Va.	431	<b>D</b>	
Bank proposed	374.	Democratic Society	85
of Kentucky	420	proceedings,	92
<b>C</b>		special meeting	178
Clay Henry, his effort	10.	merit discussed	183
Courts, a system	23	Delinquents	359
of appeals, county, quarter		Daveiss Joseph H. applies for pro-	
sessions,oyer and terminer, and		cess, &c.	393. 404
district	24—29. 174	proceeding, &c.	396. 400
Corruption of the system	26	his character	490
Courts, subject resumed	51	<i>Duces tecum</i> to the President	432
innovations	58	Divorces regulated	462
county, to appoint inspector	322	Duelling suppressed	474
power limited as to contempts	288	<b>E</b>	
circuit U. S. abolished	344	Execution	74
dist. and general,abolished	350	Expenditures	80
circuit, characterized	1b.	Ellicott on the Mississippi	219
		Emancipation, a topic	247

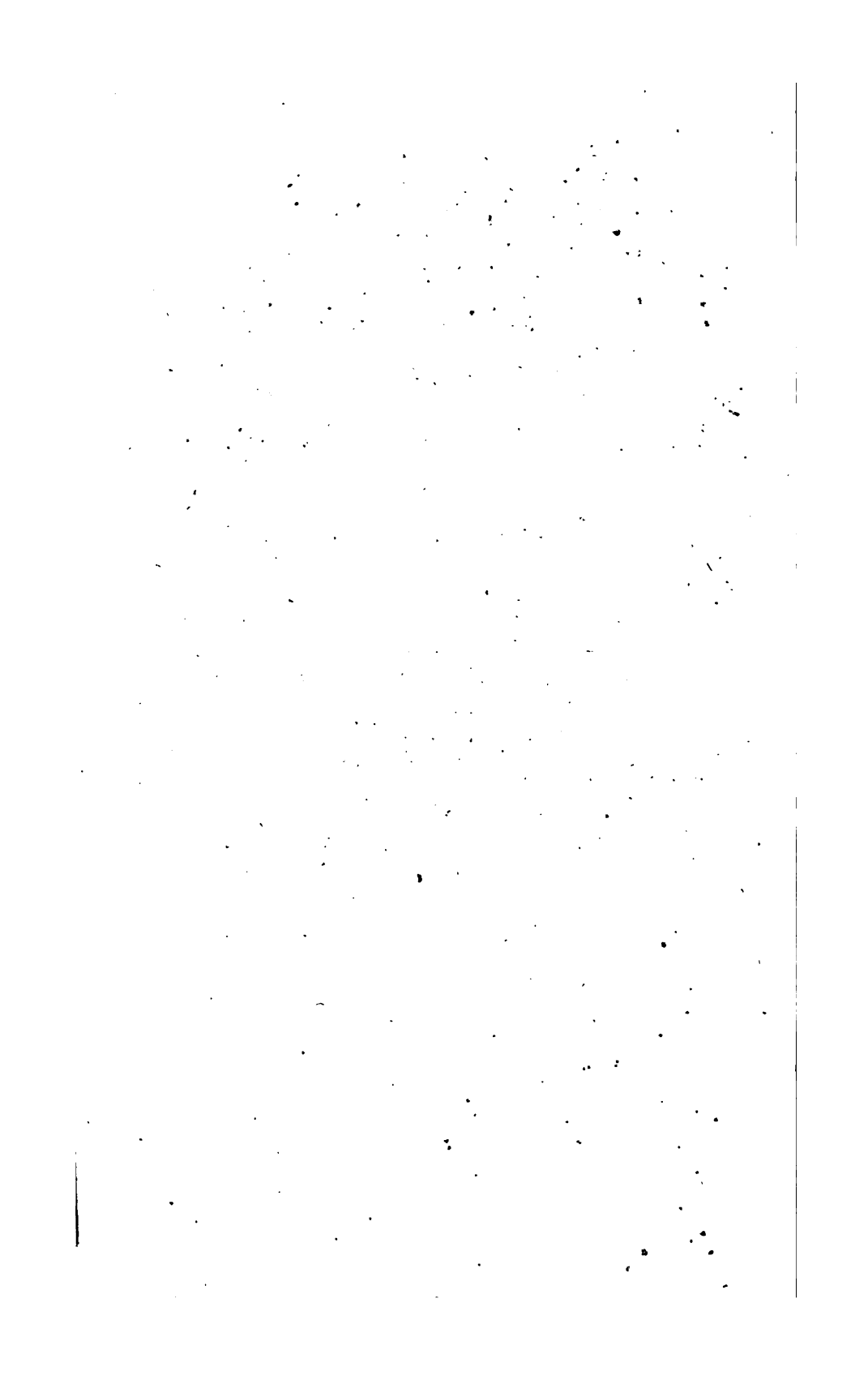
Envoys to France rejected	250		
Embargo	466		
<b>F</b>		<b>L</b>	
Frankfort, seat of government	6	Legislature first assembled	1
residence for secretary &c.	185	proceedings	12
Forfeiture incurred	20	Lands subjected to execution	71
Funk John divorced	244	Lachaise and Democrats	120
Faction, what it is	113	Lexington resolves	121
French rupture	198	Logsdon Joseph, adventure	134
France hostile	206	Legislative proceedings 173. 194. 207	
French decree &c.	280—1	233. 254. 316. 336. 342. 348. 358.	
mission of Ellsworth	293	363. 370. 412. 454. 459. 472.	
L'Insurgent taken	lb.	Libraries incorporated	336
<b>G</b>		Louisiana purchased	362
Government commenced	1	<b>M</b>	
on what founded	115	Muter George	78
its use	212	his pension	415
Genet arrived, his intrigue	87. 93	Miller sent to the Indians	137
Governor communicates corres-		Marshall H. elected to the senate	161
pondence with J. Innis	170	instructed how to vote	172
Green river settlers	178	Monroe James sent to Paris	361
Garrard James Gov. his speech	189	Madison James a candidate for	
quotations from it	266. 276. 282	presidency	457
his communications	333. 368	<b>N</b>	
Gracchus on convention	248	Nicholas George, attorney general	4
<b>H</b>		his letter	223
Hardin John Col. killed	41	Navigable waters noticed	70
his biography	42	<b>O</b>	
Hardin William wounded	135	Offices incompatible	65
Hawkins Martin, proposals &c.	317	Otter Lifter characterized	145
Harrison governor of Indiana,		Owens Richard killed	154
makes war &c.	480	Occupying claimants	203
his account of the battle	494	Opinions in Kentucky	250
examined	507	Orleans' port shut	360
<b>I</b>		Observer	386
Innis James, his mission	153	Ohio canal	416
Justices of the peace, their fees	34	Occupant law	473
jurisdiction	473	<b>P</b>	
Interest on damages	475	Party, its character	113
Indian hostilities	40	Parties of different kinds	188
depredations	81	Power Thomas, his agency	219
Impeachments &c.	73	Penitentiary established	238
Inspections, acts concerning	lb.	Penal code	lb.
Innis Harry appointed judge	78	President's proclamation	411
sends Spaniards to Wilkinson	154	his conduct reviewed	422
proceedings in the legislature	447	<b>Q</b>	
Jefferson Thomas secretary U. S.	88	Quarter session justices excluded	
partialities to France &c.	125	from the legislature	170
Jefferson to Washington	201	<b>R</b>	
to Mazzei	204	Relief system commenced	15
made president	340	Revenue tax &c.	18. 20. 23
Jefferson and Burr	339	Replevy allowed	71
Innis Harry, reasons	224	Recovery Fort besieged	136
Insurance company	348	Resolutions of the legislature	159
<b>K</b>		for an address to remove Judges	
Kenton Simon, further particu-		Muter and Sebastian	161
lars of his life	149	Revenue deficient	237
Kentucky Adademy	158	Representation apportioned	
		185. 463. 476	
		Rodgers Commodore	473

# INDEX

v

<b>S</b>		Treaty with the Indians	149
Shelby Isaac, first governor	1	with Spain	1b.
his speech	2	Titheables	217
his conduct	94	Toasts	278
correspondence	99	Tecumseh, Indian chief	482
his letter, &c.	150	Tippecanoe battle	489
Salaries of governor, &c.	79	U	
Scott General	83	Unsound minds provided for	128
at Georgetown	136	V	
elected governor	453	Vineyard Society	319
his communications	1b.	W	
his valedictory	522	Wilkinson General	41
Sheriffs declared ineligible	169	receipt of pension	155
Suffrage, right discussed	212	implicated	422
Sebastian, Innis, &c. intrigue	219	Warrants civil list	76
Salaries increased	241	Wayne General	82
State sovereignty discussed	270	instructed	117
Seminary Transylvania	280	on the frontier	132
may move	358	marches, fights	137-39
Salaries of judges abatable	337	correspondence	140
Street assaulted	378	Whitley William, biography	141
Sebastian's pension	379	Wages of legislators raised	185
Sergeant, new officer	465	Washington still held the confi-	
<b>T</b>		dence of a majority	123
Todd Robert, &c. commissioners,		but an object of abuse	126
fix the seat of government	5	Washington to Jefferson	201
Taxes laid	18	Wood and Street arrive	375
on spiritous liquors	123	"Western World" established	377
Treaty with the British	148	War	477





THE  
**HISTORY OF KENTUCKY.**

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CHAP. I.

*Commencement of operations under the Constitution—Governor &c. repair to Lexington, and open the first session of the Legislature of Kentucky—Governor makes communications to both houses—the manner, and substance, of each—Proceedings of the General Assembly—Courts—Revenue, &c.*

[1792.] THE elections having been made in the month of May, agreeably to the provisions of the schedule annexed to the constitution; and Monday, the 4th of June, 1792, appointed for the meeting of the general assembly, in Lexington; the governor, and members, elected, stood ready to repair to the seat of government. Accordingly, on the 3d of the month, Isaac Shelby, the declared governor, left his farm, destined for that place; in order to take on himself the executive administration. The same day, passing through Danville, he there received a congratulatory address, from the inhabitants—to which he returned a respectful reply; and then proceeded on his journey. The next day he arrived in Lexington, escorted by a troop of volunteers, who had met him on the road, pursuant to an order of the trustees of the town, by whom he was received with some parade; when addresses, similar to those already mentioned, were exchanged between the parties.

On the same day, arrived also, the greater number of the senators, and a large proportion of the representatives: no business, however, was done on Monday. On the next day, a quorum of both houses of the general assembly, were formed in their respective chambers. When each proceeded to organize itself, according to the powers vested in it by the constitution. The senate, chose Alexander Scott Bullett, for its speaker; and the representatives, placed in the chair of their

house, Robert Breckenridge—both from the county of Jefferson. The clerks, and other officers, were then chosen. Communications between the two houses, being exchanged, that each was ready to proceed to legislative business; a joint resolution was adopted, that the governor should be informed by a committee, composed of members from each house, that they were ready to receive such communications, as he might be disposed to make.

The committee, according to order, reported that they had waited on the governor, and to their information, had received his reply, that he would the next day at 12 o'clock, in the senate chamber, meet the general assembly, in order to make his communications. Accordingly, on the day appointed, the speaker and members of the house of representatives, repaired to the chamber of the senate, a little before the time for expecting the governor, and took the seats prepared for them, on the right front of the speaker's chair, the senators being on the other. At the appointed hour, the governor, attended by the secretary, made his appearance at the portal of the hall; when the speaker of the senate leaving his seat, met the governor, and conducted him to one, placed on the right of the speaker's chair.

After the repose of a minute, the governor rose with a manuscript in his hand, and respectfully addressing, first the senate, and then the house of representatives, read the communications which he had prepared; and delivering to each speaker a copy of the manuscript, he retired: as did also, the speaker, and members, of the house of representatives; who were re-formed, in their own hall, immediately after.

Each house, resumed its appropriate functions; and among the first business, ordered the communications from the governor, to be entered on the journals.

In substance, they recommended to the attention of the legislature, the prosperity of the country, as the great object of government—the establishment of both private and public credit, as among the most efficient means of effecting this desirable result. The first, was represented to depend upon a speedy, and impartial administration of justice; the latter, on a scrupulous adherence to all public engagements.

Then, he successively urged, the speedy adjustment of the disputed titles to lands, by the mode pointed out in the constitution; the regulation of future elections, in such manner as to guard against undue influence; the appointment of two senators, to represent the state in the congress of the United States; and the passage of a law to compel sheriffs, and other public officers, to give security for the due performance of their duties.

To the house of representatives, he recommended, the raising of an adequate revenue, for public exigencies; and the appointment of commissioners, to fix on a place for the permanent seat of government. Giving to both houses, his assurance of a cordial co-operation in such measures, as should have for their object, the good of the republic; and finally, advising them to use despatch; rendered the more necessary, by the unorganized state of the various departments of the government.

In this procedure of the first governor of Kentucky, is seen an imitation of the example, equally appropriate, and respectful, set by President Washington, upon entering into the execution of his official duties. While it is also seen, that the two houses of the general assembly, readily reciprocated the civility of the governor; as did congress, that of the president.

That distinguished personage, George Washington, elevated to the highest office in his country's gift, did not feel, or think, himself, either, too great, or too little, to meet in proper person, the senators, and representatives, of the people, intrusted also, with the performance, of high public duties; and to exchange with them in official form, the civilities, and courtesies, which should exist, and be practised, in the intercourse between the public functionaries, of a free, and enlightened government.

Such continued to be the course pursued at the opening of each session of congress, during the two presidencies of Washington, and that of his immediate successor, Mr. Adams. And such also was, in substance, the practice in Kentucky, for the

same period. After the expiration of twelve years, Mr. Jefferson, at the head of anti-federalists, and an appropriate democracy, becoming President of the United States—it was ordained, in the cabinet, of party expediency, “that whatsoever could be traced to President Washington, should be changed, in name, or appearance; and, if possible, consigned to forgetfulness.” Hence, this intercourse of official comity, was abolished; and in its place, was substituted, the cold, and ungracious formality of sending a written message by a private secretary.

This might be read, or laid on the table, at the option of either house. And so has been the course of Kentucky.

Thus, foregoing, those answers, or responses, in either house; in which new ideas were occasionally suggested, new sources of information opened, and a grateful commixture of feeling, and sentiment, produced; to the mutual nurture of approbation, confidence, or esteem—ever pleasant to generous, and elevated minds. While the same channel of intercourse, furnished a vehicle equally convenient, for suggesting an admonition, modifying a project, or checking a contemplated enterprise.—Again: the publication of these reciprocal communications in the newspapers, would furnish their readers, with authentic evidence of the state of public opinion, of the prominent subjects of ensuing legislation, and of the probable results of proposed improvements. And thus also, in a plain and simple interchange of intellect, the best dispositions of the human heart were gratified, expanded, reproduced, and cherished.

Among the earliest appointments made by the governor, was that of James Brown, the brother of John Brown, already introduced to the reader, and George Nicholas: the first, being made secretary, the last, attorney general; of the commonwealth.

By joint ballot of the two houses of the general assembly, John Brown, and John Edwards, were chosen senators, to congress. And by the house of representatives alone, twenty-

one persons, were elected, as a nomination; of whom, five were to be left—by the representations from Mercer, and Fayette, counties, alternately striking out one; after which the remaining five, were to be *commissioners*, to fix on the place for the permanent seat of government. The list after this excision, exhibited the names of Robert Todd, John Edwards, John Allen, Henry Lee, and Thomas Kennedy. These were of course the “five commissioners,” on whom the duty devolved; any three of whom might fix the seat of government.

So much had the performance of this duty, been the subject of jealousy, and apprehension, between the opposite sides of the Kentucky river, that recourse was had to this singular mode of election, to obviate the consequences. Fixing the permanent seat of government, whether it be considered, in either, a civil, or military, point of view, is no doubt at all times, a matter of real importance. In Kentucky, no sooner was the separation from Virginia, and the consequent new state, talked of, than the future seat of government, mingled in the conversation, of each political party. As the time for the separation &c. approached, the interest in the seat of government, not only appeared to magnify, and extend itself to all descriptions of people, but it took a local character; shaping itself by the Kentucky river; and which of course was either north, or south, to the exclusion of the other. This contest, had excited much feeling, on account of the supposed conflict of interests, between the opposite sides, of the river; interests, it is believed, always considerable to those immediately at the place; and much overrated, by those at a distance. Such was the strength of this local rivalry in the convention, which formed the constitution, that neither side was willing to leave it, a subject of ordinary legislation.

While the result may fairly be considered as a compact. One, which should have proposed to embrace the object, more directly, and definitively, could not have been agreed to, by the parties. Such was the state of the case, for which provision was made.

A majority of the five commissioners, met soon after their appointment, and fixed on Frankfort, as the proper place. The constitution attached "permanent," to it: and to ensure the effect, required the concurrence of two-thirds of each branch of the legislature, to remove it, to any other place.

The situation of Frankfort, immediately on the northward bank of the river, which separated the parties; in a bottom, common to both—if the expression may be allowed—but largest on the south side, whence in time, the town might be extended; should have silenced, if any thing could, all opposition, and complaint. Such, however, was not the case, then; nor, has all the favourable circumstances which unite in support of the choice, been able to free it from obloquy, and reproach, notwithstanding its advantages.

Let them be enumerated, and compared with those of any other place.

The river, navigable by steam boats, much more equally bisects the state, than any other. While the water conveyance will ever be important for transportation of every kind: among which, the article of fuel, is one of no inconsiderable magnitude; and to be found in mines of coal, and in durable forests of trees, on its banks.

It is at the lower edge of the fine rich lands on both sides of the river; but especially, of those on Elkhorn, &c.

It is, probably, at the head of steam navigation. The connexion which it holds with many of the principal towns, point out Frankfort, as their port of storage, for export, and import. It is, without exception, as healthy as any town in the state.

Nothing need be said of its market. It will always be best supplied, when most is demanded.

It challenges any place in the commonwealth, as near the centre, to shew as many circumstances favourable to a permanent seat of government, as are concentrated at its site.

It being fixed on, by the commissioners; measures were soon after taken to erect a house for the accommodation of the general assembly, and the subordinate officers, immediately attached to the government. This was a building of stone; paid for

principally, by the proceeds of private contributions; and called "the State House."

Another, was afterwards built of brick, for the residence of the governor; and paid for out of the public funds. This hardly can be said to have a name. Sometimes it is called, "the Governor's House;" at other times, "the Government House;" and frequently, "the Palace." Each of which, appears improper. The first, because the governor may have a house of his own in town; which would render the name, ambiguous. The second, because it accommodates but one department; and that as a family residence merely. The third, because, "a palace" is the residence of a prince, or viceroy. And these are not recognised by the constitution; nor need the term, or appellation, be *familiarized*, to the popular ear.

"The State House," is a name sufficiently appropriate, and now familiar. There is, therefore, no occasion for changing it.

The house occupied by the governor, in his official capacity, with a little effort of the imagination, may be called "the Capitol;" as it accommodates, *the head* of the executive department. Or, there is, or that is, the house, of the "*head* man." The Roman "Capitol" being so named, from *caput*, a head.

It may perhaps be said, that it is the business of history, to perpetuate names, not make them. That may apply where they exist; but would be impertinent, where they do not. After all, names are arbitrary, often accidental, in their origin; any one may invent, or bestow them—it is use, and consent, which establish them. *Capitol*, is a name of easy pronunciation; "it suits the mouth well;" is of reasonable dignity, venerable antiquity, and modern use: what more is required for a name?

Be all this, however, as it may; it will be admitted, that any one who can find Frankfort, may find where the governor lives.

Let all then, that has been said about the name of the house, go for nothing. Nevertheless, it is of some consequence that the seat of government should remain where it was first placed. Inasmuch, as to all the reasons, then in favour of it, there have been added since, in consequence of the act of selection, many



others, affecting private interests—which but for its being the seat of government, would never have been invested there. The public buildings are also of great value.

Besides, good accommodations may now be had in Frankfort; which is more than can be said of any other place, having any pretension to centrality. In short, so judiciously was the commission of five, for fixing the permanent seat of government, executed, that, notwithstanding the restless disposition, whim, caprice, and selfishness, of mankind; and the repeated, and strenuous attempts, which have been made to remove it; yet it holds its pre-eminence, and still baffles its enemies. Who, in fact, have no place to offer in competition, that in the mind of a dispassionate man of common sense, could produce a moment's hesitancy. "Not one object of public utility, has ever been, or can ever be, pointed out, as probably to be effected, by a removal." And notwithstanding the convention of 1799 recognised, and corroborated, the seat of government, at that place—yet for many years, and very recently, was the removal made a question in the legislature! The mere abstract right to make the motion, is not to be doubted—while its utility has never been shewn—although often, almost annually, has the motion been repeated—and as often, lost.

A strong case, it must be admitted, to evince the restlessness, ever found among men—and no less striking, as a proof, of the unwillingness, apparently inherent in human nature; to permit any portion of the community, to possess, or enjoy, although the product of their own labour, and amelioration; any kind of convenience, or advantage, not common to all. Notwithstanding, that in its nature, as the seat of government, for example, it is perfectly incommunicable, to all. Was not the public faith pledged, in fixing on Frankfort, as the *permanent* seat of government, under constitutional provisions, to those who should vest their money in lots, build houses, and improve the place, for the necessary and comfortable accommodation of those, who should be called there on public, or even private, business? Was not this pledge renewed, when the private funds of individuals, were accepted, and applied, to the building

of a state house—both formerly, and latterly! And yet, repeatedly have majorities been found, who have voted for removal. Two circumstances, have mainly prevented the effect of this motion terminating in an actual law for changing the seat of government—one was, the spirit of selfish locality of feeling, among the rival pretenders, to preference of place; the other, the constitutional restriction, which requires the concurrence of *two-thirds of both houses*, to pass the act.

The operation of such examples, are to discourage improvements at the place; to keep such as had ventured, and laid out their money and labour, ever in jeopardy: and generally, to impair, or destroy, all confidence, in arrangements dependent on acts of the legislature: and thus, to arrest and prevent, useful enterprise, and liberal exertion.

Such, unquestionably, is the tendency of the government; and its history, can but demonstrate, the inaccuracy of its balance of powers, in the legislative scale.

The objections to Frankfort, as the seat of government, are not, that it is unhealthy—or that it cannot be supplied with provisions—with fuel—with any, or with all, the conveniences, of good living—that its atmosphere is unfavourable to intellectual exertions, or subject to any physical debility—but, “that it is not in the centre of the state!” Whence, it has been asked, “where is the centre of the state?” In reply—a place in the Knobs, ten, or twelve miles southwestward of Harrodsburgh; surrounded by a broken tract of country—too sterail, for cultivation, with here and there an exception, has been pointed out; and gravely urged, in preference to Frankfort, for the seat of government!! Yes, hours, and days, have been consumed in the solemn farce, called a debate, on motions for removal—many members voting in the mean time, however, on correspondent motions; for Danville, Harrodsburgh, Bardstown, and Lexington, within the body of the state—and for Louisville, on one of the extreme outlines.

Ill-fated, devoted Frankfort! on one occasion, its agonized, and breathless inhabitants, were made to hear its site depressed below, overwhelming floods; its adjacent hills, elevated to the

clouds, and broken into precipices; the country round about, described as the fit haunts of wolves, and bears—while a crack in the plaster of the state house, and a cobweb on the ceiling, were magnified into objects, but little less portentous than comets—or less to be dreaded than a volcanic irruption—of which, they might be taken as the certain auguries. It was a subject befitting the oratory. Mr. Clay, probably, never made greater exertions, or a more illiberal display—but as he did not exceed thirty years of age, and has delivered several greater speeches since, this is merely mentioned for the sake of historic justice. The effect, at the time, was great; and some good people conceited, that they saw the seat of government on the road to Lexington, where the orator resided.

The constitutional requisition, of two-thirds, to an act of removal, saved Frankfort from the effects of the storm, then, as at other times; and hence, it may be inferred from experience, that the seat of government, is as permanent, as the constitution—but not more so: and that is known to depend on popular will.

The seat of government is no trivial subject, in any country; but in Kentucky, owing to the spirit of hostility which Frankfort, has experienced from her neighbouring towns, it is rendered of as little importance, as it well can be; while it remains to be, called the seat of government.

This subject, in most countries, is seen to connect itself also with the moral, political, and scientific, character, of the people; not of that place only, but of the country.

To cultivate either the arts, or sciences, or to become renowned for polite and elegant literature, requires numerous means; to be found only, in populous cities, or large assemblies of people. In some states, these are the consequences of a concentrated commerce—in others, of an accumulation of military plunder; and the consequent residence of the plunderers. Neither of which can be expected in Frankfort; nor in Kentucky.

Frankfort, has various natural advantages, some of which have been enumerated; with these—with the seat of govern-

ment—with the university—and a perfect freedom from apprehension of losing these incidental advantages—she would have been, a flourishing, and populous city. But instead of these aids, the bare circumstance of her being *the seat of government*, has been seen to excite an envy, and a jealousy, whose united efforts, have been to depress her; by repeated and intimidating menaces; by, bestowing on other places, and withholding from Frankfort, institutions of a public nature—which, if they had been concentrated at the seat of government, where they should have been, would have cherished a confidence, and laid the foundation of a population, favourable to the growth of the arts, literature, and science, worthy of the capital of a great state.

To attain an end, it is necessary to institute, and apply the appropriate means.

This lesson, familiar to every schoolboy, seems but too-often forgotten by those who would be thought politicians. Or rather, perhaps, it should be said, that the politicians of Kentucky, have been of the local, rather than, of the general kind; and that they have devoted so much of their attention to their *counties*, that they had none to spare for *the use of the state*.

But history, whose business it is to exhibit in its narratives the transactions of the times, may be permitted to recall them to memory, by allusions, or general descriptions, which dispense with personal discriminations, and particular details. And this must be the course on the present occasion.

The two houses of the general assembly, attentive to the recommendations of the governor, engaged themselves in discussing bills, to regulate elections, to raise revenue, and to establish courts—besides such others, as appeared necessary to organize the government; and some of less magnitude, or of a private nature; which ultimately passed into laws—with the executive approbation. The three first, resulting from principles inherent in the constitution, and of a general character, will receive particular attention; while a cursory observation, will suffice, as to others—and the mere title, be a sufficient recognition of the residue; even of those, of a first session.

The first bill, which received the approbation of the governor, was entitled "An act establishing an auditor's office of public accounts;" approved the 22d of June, 1792.

By this law, an auditor was to be appointed, whose duty required him to state and keep an exact account of all articles, of debit and credit thereafter to arise between the commonwealth, and all persons corporate, or natural.

The second, was "An act for dividing the county of Nelson." Hence the county of Washington. "Beginning on Salt river, where the county line between Nelson and Mercer crosses the same; thence down the river to the mouth of Crooked creek; thence to the mouth of Beaver creek; thence down Chaplin's fork, to the Beech fork; thence down said fork to the mouth of Hardin's creek; thence to the Knob lick, near the head of Pottenger's creek; thence to the mouth of Salt Lick run, of the Rolling fork; thence up the run to the dividing ridge between Salt, and Green rivers; thence eastwardly along said ridge to the line of Lincoln and Nelson; thence with it to the Mercer line; thence along the Nelson and Mercer line, to the beginning." To take effect from the 1st day of September then next ensuing.

The third, was "An act for dividing the county of Woodford." From this proceeded the county of Scott. "Beginning on the town fork of Elkhorn, where the line of Fayette and Woodford crosses; thence down the creek to the south fork; thence down that until a line N. 20, W. will strike the Eight-mile tree on the road from Frankfort to Georgetown; then a straight line to intersect the Big Buffalo road between the head of Cedar creek, and Lecompt's run; then a straight line to the Ohio, at the mouth of Big Bone Lick creek; then up the Ohio, to the mouth of Licking; then up Licking to the mouth of Raven creek; then up it to the Bourbon line; with that to the Fayette line; and with it to the beginning." To commence the 1st of September following the passage of the act.

The fourth, was "An act for dividing the county of Jefferson:" whose offspring, is, Shelby. "Beginning on Salt river, at the mouth of Plumb creek; thence a course that will strike

Benjamin Hughes', near Boone's road, and the same course to a point, whence a course N. 45 W. will strike the Ohio river at the mouth of Eighteen-mile creek; then up the same, and with the Mercer line to Salt river; then down the same to the beginning." To have effect from the 1st of September then next ensuing.

Such was the evidence of extended settlements, increased population, and the desire, of occupying office.

The next, which will be noticed, was "An act for appointing surveyors." It provided for the appointment of a surveyor in each county.

"An act regulating the annual elections," was about the fifth, which passed. The elections were to be held at the court-house of each county, on the first Tuesday of May, yearly; and might, be continued for three days, under the superintendence of the judges of election, and sheriff. The former, appointed for the occasion by the county court, out of its own body of magistracy; the latter, a standing officer of the county. Contested elections, were to be tried, by the house only, in which the disputed seat was held. Either party could take depositions on notice, or might have a summons for witnesses, through the instrumentality of the county court.

Regulations, similar to those above expressed as to the election of members to congress, were also enacted. But this whole subject was revised in consequence of the change in the constitution; which abolished the vote by ballot, and substituted that by the voice; or verbal appellation.

The remark, however, is due to the subject, that the foregoing election law, was repealed at the next session of the general assembly; and another enacted, not materially variant. That the second was several times amended, previous to 1798; when an act passed to reduce into one, the several acts concerning elections.

In 1799, the act last mentioned, was repealed; and a new one passed on the same subject. Which was itself amended in 1802—and again in 1807; and subsequently.

"An act to arrange this state into divisions, brigades, regiments, battalions, and companies; and for other purposes;" had reference to the militia. The title indicates the intention. Nothing could be more superfluous, than its details; as it had but an ephemeral existence. This was the case also, with "An act for regulating the militia of the commonwealth."—These were both superseded at the next November session, by "An act to regulate and discipline the militia." The last mentioned act was amended by one passed at the January session, 1798. In the November session of the same year, all former acts on the subject of militia, were repealed; and a new modification prescribed. In January, 1799, the last law was amended; and in 1800, both these underwent revision.

At the end of another year, as if experience had brought new light to the subject, the act of 1801 was passed "to amend and reduce into one the several acts concerning the militia." And all former laws on the subject were repealed. This act was amended in 1804—and in 1806, a total repeal of all former militia laws took place; in order to give effect to one, passed in that year.

In 1807, the last act was amended. In 1810, "An act to amend the militia laws" was passed—1811, militia laws compiled, and amended—1812, "An act to amend the militia laws"—in 1814, the whole system revised, in an act, occupying 81 pages—1816, the last act was amended, by an act of 7 pages. In 1817, this act was also amended—again, in 1822. Let these suffice. Details would make a volume of large size. Besides, the last act, and its amendments, may be repealed, next session.

Is it in vain to suggest, that neither officer nor soldier will ever trouble himself to know the law, when it may, and probably will, be changed before he has an opportunity of reducing his knowledge to practice? Will legislators, act for a nation, as they would for an individual, or a small family of few concerns? Will they treat the laws of a great system, as they would their shoes, or their shirts—change them every day, or

week? The course of legislating on the subject of the militia, the only armed force in the state; the acknowledged, and sole legitimate resort for defence, in case of invasion, insurrection, or rebellion; is but an unfavourable specimen, of the spirit, which rules the country. Believing, that the constitution of government, evolves by its legislation, the very life and soul, which it imbibed from its authors, and will continue to do so, until it is perverted, or dissolved; it is intended, to present the legislation of Kentucky, on a variety of the fundamental establishments, of the constitution, in such collocation, as to enable those who read, to infer, the sufficiency, or insufficiency, the soundness, or unsoundness, of its principles; the better to discern, its perfections, and imperfections; and thence with the greater ease, and certainty, *should it ever be altered*, to ascend to the moving cause of its effects, and to establish, eradicate, or modify it, as the case may require, for the public good.

In the mean time, the title of "An act for establishing a town at Woodford court house," will shew one source of abundant legislation, of the local kind. Connected with the subject of towns, but embracing a principle of incalculable extent, and importance, was "An act giving further time to the owners of lots in Bardstown to improve the same;" passed this session. It is believed, that a forfeiture, to the individual on whose land the town had been established, was attached to the failure to build, on the lots, by the purchasers respectively, prior to a day expressed in the contract of sale. The act referred to, was at the instance of the purchasers, and without the consent, or assent, of the original proprietor, whose right to the forfeiture, was an existing legal right, resolvable into the land itself, upon an adjudged forfeiture. The act, is, an interference, of the law making power, between these parties, to favour the one side, and to prejudice the other. And thus began, in Kentucky, THE RELIEF SYSTEM—which, like the mustard seed, in the sacred parable, has grown to a mighty tree; literally, *overshadowing this land* with its baleful branches.

Such had been the practice of Virginia, before the adoption of the constitution of the United States; which, in the first paragraph of the 10th section, provides, that,



"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder; ex post facto law; *or law impairing the obligation of contracts*; or grant any title of nobility."

Till which time, she, as well as the other states, were, except as to the little restraint imposed by "the confederation," SOVEREIGN POWERS. But which, it is most apparent, the foregoing clause in the constitution, was intended to limit, and restrain, in future. Experience had amply established the fact of frequent abuse; and in nothing more, than in exercising legislation over existing contracts.

Inasmuch, however, as it was intended to lay in the new constitution, the foundation of a durable union, and free intercourse between the states and their citizens; so it became necessary to adjust the means, to the end; and for that purpose, to compromise, "state sovereignty," itself. And such was the object, and intended effect, of the above quoted paragraph; as well as of others, in the constitution, relating to a variety of subjects—as the clause in italics, does to CONTRACTS.

If Virginia, whose power, and pride, exulted in *state rights*, and *anti-federalism*, had not at the time of separation become sensible of her new duties under the general government, but had been still governed by former precedent, rather than new principles, of practice—causes having their origin in similar sources, and effects streaming from Virginia paps, may account for the conduct of her offspring, Kentucky. As, however, this is a subject, which will often occur, and sometimes demand particular attention, more will not be said on it at present.

What may be called *private* legislation, is also to be found in the acts of this session. "An act to appoint trustees, to convey certain lands of Robert Todd, deceased;" will illustrate the suggestion.

The object of the act, was, to transfer the fee-simple estate, from infants, to purchasers, of the ancestor. This branch of law making, ever subject to abuse, as it is almost, always, *ex parte*—has been carried to excess. It is, in its various

ramifications, a storehouse of much patronage, upon which every pretender to a seat in the legislature, can draw without stint, in the way of bartering promises for popularity. It being much more convenient, for voters, of a particular description, to have their business done at the public expense, by a new law, than to have it done in court, at their own cost, according to the old law. The abuses under this head, will undoubtedly merit an after notice. It is a fountain of perpetual corruption.

As an instance of economy, in those times, it is worthy of notice, that the members of the convention, who formed the constitution, were compensated, by an act of this session—which directed, that there should be paid to the president, twenty dollars; to each member, and the sergeant at arms, twelve dollars; to the clerk, fifty dollars; and to the door keeper, twelve dollars; in full of all demands.

A similar spirit of frugality presided over their act of disbursements, to themselves, and their attendant officers. Their own pay was one dollar per day; the rest in proportion.

One hundred pounds—that is, three hundred, thirty-three, and a third, dollars—were to be paid the public printer; on account. Having yet no revenue, the treasurer was authorized to borrow, for actual expenditures.

“An act concerning the treasurer,” was passed. It required of him, bond and security; also an oath, to secure the performance of his duties, which were prescribed in the act. The leading object of which was, to receive, and disburse, the public revenue; of which a particular account was to be stated, and with its vouchers, exhibited to a committee of the legislature annually, and published. The act is cautionary and penal; provides for the treasurer’s accommodation, an office, a chest, a clerk; and saying, that he shall be compensated according to his services, renders him, responsible to the governor, and his successors: which either means nothing, or it means too much—too much, certainly, if it means, that he holds his office at the will of the executive magistrate; nothing,

or worse than nothing, if it means less. In common prudence, what has the governor to do with the treasury?

It is one of the few acts, concerning primary establishments, which has not been repealed, nor the structure of it materially altered, by subsequent statutes. Upon its re-enactment, in 1798, it was enlarged, the better to effectuate its objects.

The twelve articles, proposed as amendments, to the constitution of the United States, were approved, and confirmed.

The land office, was established, by an act for the purpose; in which provision was made for the appointment of a register, and the emanation of patents, under the land laws of Virginia. This act was amended in the following session; and re-enacted, and enlarged, at the January session, 1798; with the view to improvement.

"An act for establishing a permanent revenue," became an interesting subject of discussion at this session.

Under this act, there were to be paid into the public treasury, annually:

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For every hundred acres of land, and so in proportion for a greater or smaller quantity,	00	2	0
For every slave, except such as have been, or may be, exempted by the county court from the payment of taxes on account of age or infirmity,	00	2	0
For every horse, mare, colt, or mule, (except for covering horses)	00	0	8
For every covering horse, the sum for which such horse covers one mare the season.			
For every head of cattle,	00	0	3
For each wheel on every coach, or chariot,	00	6	0
For each wheel on all other riding carriages with four wheels, not used in agriculture,	00	4	0
For each wheel of two-wheeled riding carriages,	00	6	0
For every billiard table,	10	0	0
For every ordinary license,	3	0	0
For every retail store,	10	0	0

To carry the act into effect, commissioners were to be appointed, in each county; whose business it was to take in lists of taxable property, which they were to state in a book according to the form given in the law—and which they were to double, treble, and quadruple. One of these, to be retained by each commissioner, and delivered to his successor; another, with the lists, to be delivered to the clerk of the county court; one other to the sheriff; and the fourth, to the auditor of public accounts.

The sheriff, was to make the collection from the people; account with the auditor for the amount; and pay the same to the treasurer, once a year.

Details were inserted in the bill, corresponding with these arrangements.

As this bill passed, the appointment of the commissioners, devolved on the governor, in virtue of the constitution; there being no mode for appointing them, prescribed by the act. But by a subsequent act of the same session, the appointment, was vested in the county courts; who had been authorized by the first act, to assign particular districts to each commissioner, where there were more than one in a county.

One singular inconvenience was produced by the original act, to persons owning lands in different counties—instead of giving in, and paying where they resided, the business was to be done in the district where the land lay. The land, as if all had been of the same quality, or value, was all taxed by hundred acres, at the same rate. These and some other crudities were corrected, by an amendatory act of 1793—which permitted a man to give a list of all his lands to the commissioner of the district where he resided: while the lands were to be designated, by first, second, and third, rates; according to the quality of the greater quantity, in the tract—and the tax adjusted to these classes; by affixing *three shillings* to the first, *one shilling and sixpence* to the second, and *ninepence* to the third, class. This seemed to be aiming at justice; and as the tax was low, and so large a portion of the lands out of the settled parts, and not accessible to assessors, it gave very general content for many years.

By the first act, any person failing, or refusing, to give a list, when called on, were liable to pay "five pounds"—by the second act, which was a very general modification of the first; extending to seventeen sections, and filling four pages, large octavo; the party failing to furnish a list, incurred the same forfeiture, as before.

Nonresident holders of land, were permitted to give in a list, and pay, to the treasurer. This was a great accommodation to the party.

In 1794, the act was again amended, by an act of five pages, and thirteen sections; by which it was declared to be the duty of every person when applied to by a commissioner for a list of his taxable property in the year 1795, to give in on oath a list of all his lands, whether held by entry, survey, patent, or deed of conveyance; specifying in such list, the number of acres in each tract, the county in, and water course on, which it was situated; also what tax (if any) had been paid for each tract; and the year for which such tax was paid—while every person failing, or refusing, to give in a list of his, her, or their, lands, "*forfeited to the state, all title, claim, or interest, that he, she, or they, may have in, or to, any tract or parcel of land, not given in as aforesaid; and the land so forfeited, shall be disposed of in such manner as shall be directed by law. Provided nevertheless, that nothing herein contained shall be construed to extend to the lands of infants, feme coverts, or persons non compos mentis.*"

NONRESIDENTS, by this act, were permitted and required, to list their lands with any, but some, commissioner, for taxation; on or before the last day of November, 1795, subject to forfeiture, upon failure, as in case of residents.

The land was subjected to be sold for the taxes, if they were not paid, or collected by distress on chattels, by the time prescribed: and in case the purchaser was evicted, in due course of law, he was authorized to recover the amount paid from the claimant, whose right had been sold.

In 1795, the act was again amended, by nine sections, covering four pages; in which *residents* were enjoined to list all their lands with the commissioner of the district where they resided:

while *nonresidents*, were to list theirs with the auditor of public accounts; who was charged to open a book for that purpose, and to receive and enter the lists; which were required to be made out in the form prescribed to residents—that was, to express, the quantity of acres; the county in which the land lay; the waters on which it was situated; and that it was surveyed and patented, if such were the facts, respectively, within the knowledge of the party.

A perpetual lien was given to the state, on all lands, for the payment of the taxes; and details, annexed to the several objects, as in former acts; which are, however, out of the range of this history.

It has been seen, that each year produced a new law, on the subject of revenue; the whole of which were superseded, in 1796, by “An act to amend and reduce into one the several acts establishing a permanent revenue.” This act contains sixteen pages, and twenty-five sections; being a repetition, of former acts, with modifications and additions. The lands, were still to be placed in three classes, and taxed, as before; as were also the other enumerated articles; the commissioners were retained; as were likewise most of the provisions of other acts; and the same kind of machinery, moved in the like routine, employed to carry the act into effect, as formerly.

Lands once listed, were not to be listed again, unless transferred.

A failure, or refusal, to give in a list, incurred the forfeiture of five pounds; and treble tax—while all owners, of entries, surveys, patents, deeds, or claims otherwise, to lands, were severally required, to list each for taxation; “residents,” with a commissioner; “nonresidents,” with the auditor.

The lien of the commonwealth was retained; and the land might be sold, for nonpayment of the tax due on it.

In addition to the provision, for the recovery of the taxes paid, by purchasers under sales for revenue; it was further enacted, that in cases where any person had paid the tax on land, from which he should be evicted, by a better right, or where he, or she, should relinquish, to the state, his, or her,

right to land on which the taxes should have been paid, that they should respectively be entitled to the auditor's warrant, for the amount paid; subject to the abatement of six per cent, *per annum*—which warrant, was receivable in taxes.

This regulation promised some alleviation of the rigour, which required, that all claims to land, whether good, or bad, should be listed, and paid for; and the more especially, as on an average there were three bad claims, for one that was good. A singular feature of this indulgence, deserves a passing remark—the abatement of “six per cent,” was not reserved upon the gross amount paid, which would have operated equally in all cases; as a tax, or compensation to the government, for extra trouble and expense—but it was “*per annum*.” Whence, the longer the government had used the money, the more of it was retained—and in a correspondent manner, the longer the individual had been deprived, the less he received.

But this was an act of indulgencies—and lands ceded to the Indians, were not required to be listed: such were those below the Tennessee river; and some on the Cumberland river—the first to the Chickasaws, the last to the Cherokees.

A tax, was imposed on pedlars, who were required to obtain licenses respectively from some county court; for each of which five dollars were to be paid yearly.

Law process, was also taxed:

	s.	d.
On each original writ, or subpoena in chancery, issued from the court of appeals or any district court,	6	0.
On each original writ, or subpoena in chancery, from any other court,	3	0.
On each appeal to the court of appeals,	12	0
On each writ of error, supersedeas, or certiorari, from the court of appeals,	6	0
To be paid by the plaintiff, and taxed in the bill of costs.		
For each deed recorded for town lots, or other land	3	0
For the seal of any court,	3	0
For the seal of the commonwealth,	6	0
To be paid by those who have them impressed.		

This act stood, till January, 1798—that is, rather more than one year. It was then amended—not very materially changed; and provision made “for appointing a collector of the taxes;” in case the sheriff failed to give bond and security. The county court had the appointment; and were to require bond, &c. This act occupied about two pages, and six sections. It was principally employed in adjusting matters with nonresidents, and the owners of billiard tables.

In the fall session of 1799, this subject, was again taken up, and a new act passed, entitled, “An act to amend and reduce into one the several acts establishing a permanent revenue.” It is the title of the act of 1796; and doubtless, a repetition of most of the provisions of it; although in a new dress. The act fills seventeen pages in the usual large octavo. All repetitions will be avoided; while new objects only, will be noticed.

Cut money, might be received for taxes—under the impression, it was said, that it would domesticate it, and keep it in the country—it was however to be weighed; a most troublesome, and impracticable operation, to most people; of course, it was not done: while the effect was to depreciate the coin, by rather encouraging the practice, but two frequent, of cutting dollars; in order to obtain *five*, instead of four quarters. A consequence, was, that cut quarters, passed, for about twenty cents, as soon as they left the state—and which compelled merchants, and others, who acquired large sums of it, to dispose of it as bullion—after adjusting their prices to it, or it, to their prices, at home; where the fifth was often denied to be the fourth.

The register was authorized to sell lands of nonresidents, for a failure to pay the taxes—and both him, and the sheriff, to convey, to purchasers.

It is to be remarked, that the new constitution formed, in this year, took effect in the next—which will be made an epoch; and this subject again renewed, with the view of presenting a connected series of legislation in relation to it, down to the present year.

The system of courts, established in 1792, and also subsequent variations, so far as seems necessary to general history, will next engage attention; and may elicit remark.



To begin with the act to establish the court of appeals—it was to consist of three judges; one of whom was to be styled, “chief justice of Kentucky;” another, “the second judge;” and the other, “the third judge;” any two, were to form a quorum. They were each required to swear, or affirm, solemnly, in form, as follows:

“I, (naming himself) will administer justice without respect to persons, and do equal right to the poor and to the rich; and I will faithfully and impartially discharge and perform all the duties incumbent on me as a judge of the court of appeals, according to the best of my ability and understanding, agreeably to the constitution, and laws of Kentucky.”

The court, was to hold two sessions, or terms, in each year; one, the first Monday, of May, the other, of October; which might, if necessary, continue thirty juridical days: and if the judges saw cause, they could prolong the term, for the despatch of business. They were to appoint their own clerk, who was to take an oath, and give bond, for the performance of his duties; under the inspection of the judges; one of whom was annually to examine his office, to see that it was well kept.

The sheriff, was assigned as an officer of the court, and was to attend its sittings, by himself, or one of his deputies.

No discontinuance was to result from any failure of a quorum to attend.

The court, had power to direct the forms of writs and process—and to send writs of mandamus, &c. to inferior courts. It had original jurisdiction, according to the constitution; of which notice has already been taken.

The appellate jurisdiction of the court, extended to cases previously decided in the district court, and courts of quarter sessions, under the Virginia administration—as well as to those taken by appeal, or writ of error, from the courts of Kentucky: and rules were prescribed for conducting the business.

At the next session of the legislature, an additional term, was authorized.

The original jurisdiction of the court, was taken from it, in 1795, and vested in district courts—hereafter to be further noticed.

In 1796, the court, without any previous defect of authority, except that the original jurisdiction had been withdrawn; was established, by a new act, with the title of "An act establishing the court of appeals." Which appears to be literally copied from the first—omitting from the act, what appertained to the original jurisdiction; it even required, the oath, of the judges, and that they should appoint a clerk; who was to take an oath, and give bond, as by the first act:—it also gives jurisdiction, and prescribes the rules for conducting business; and contains the properties of an original law—which had the effect, it is believed, of repealing the existing law, and of producing a new commission to the judges. Nor is such a legislative anomaly, the less remarkable, for containing no repealing clause, as to former acts.

Three sessions were ordered, to be held in May, July, and October.

The court, or rather clerk's office, was made a place, for recording deeds, powers of attorney, and other writings; which might be acknowledged before the clerk, and recorded in his office, for the whole state. A provision of great convenience, to those who held lands in different parts of the state, and desired to convey them.

In 1797, no amendment was made; but in the year 1798, there was an amendatory act. It required, the production of records, in cases of appeal; which were to be filed within a given time; and prescribed other rules of practice. In 1799, the law of the court, was further amended, by varying sundry rules of practice—which, however vexatious to the court, or the lawyers, were of no great public convenience, or detriment, to any others.

Being the last act on the subject, under the first constitution, the theme will be no further pursued, for the present.

The attention of the reader will be turned back to the session of June, 1792; and particularly to the consideration of "*An act establishing county courts, courts of quarter sessions, and a court ofoyer and terminer.*"

The title of this act, suggests the aggregate idea of a judicial system; prudent at the time, as there was nothing new, or strange, in it, to disturb the popular ear; but otherwise it was rather accommodated to the original jurisdiction vested in the court of appeals, than an able and enlightened distribution of the judicial power of the commonwealth. It had its models in the Virginia system of courts; which were familiar in Kentucky—but the state of land claims here, was such, so multifarious, and ramified, interesting, and important, as to produce a state of case, which of all others, should have been consulted—of which Virginia afforded no example—to which, she had not adapted her jurisprudence—and which required to be relieved, by remedies, well selected, of potent efficacy, and speedy application. In a few plain words, the numerous, and multiplying disputes, about land titles, which disquieted domestic peace, heated neighbourhood feelings, and infected social intercourse; should have been a first object of legislation; demanding a temporary sacrifice of every other interfering object, or consideration, until the country was relieved. This was to be done only, by a proper judicial system; which should have placed a competent court, in each county; with sessions, limited alone, by the business before them. Unfortunately for the country, however, the groundwork of a different system, was laid in the constitution, by an attempt to draw all the business of that kind, to a court of appeals, with *original* jurisdiction: while the great and essential interests of the commonwealth, “the speedy adjustment of land claims,” were bent, and bowed down to the dust, from motives of lacre, in one or two popular lawyers; and their dupes—who, in their turn, duped others. These are not new ideas—they were suggested, and made public at the time; objections stated, consequences detailed, illustrated, and proved; then to no purpose, but afterwards, in practice, demonstrated.

Nothing was done on this interesting subject by the court, who alone had jurisdiction, in 1792. In 1798, there were four cases decided, to-wit: *Parmenas Briscoe, vs. James Speed;*

Peter Consilla, *vs.* Parmenas Briscoe; Thomas Swearingen, *vs.* Parmenas Briscoe; and William Eagan, *vs.* Samuel Hinch and others. In 1794, three cases were decided, viz: Thomas Whitledge, *vs.* Thomas McClanahan; Hannah Miller, &c. *vs.* The heirs of Arthur Fox; and Benjamin Fry, *vs.* John Essry. In 1795, five cases were decided, viz: George Bryan, &c. *vs.* John Bradford and Andrew Gatewood; Joel Jackson, &c. *vs.* George Wilson and others; Brackett Owens, &c. *vs.* Aquilla Whitaker and another; John Smith, *vs.* Nathaniel Evans; and Alexander Sinclair, *vs.* Christopher Singleton. That is, in all, twelve cases, were determined, down to the close of the year 1795; which terminated this erratic course, and offered one that was new—yet to be organized, and systematized, by practice. But more of this hereafter.

At present, the title of the act which has been quoted, recalls the attention to the courts, at first adopted.

A county court, or court, in each county, to be composed of the justices of the peace, for each county respectively, was established. There were at the time thirteen counties—the number of justices, was from eight to sixteen; having some regard to population, but pursuing no rule: *any two* of three, to be appointed for that purpose, were to compose “a court of QUARTER SESSIONS, and any other two, a COUNTY COURT, and to do the whole business as such, until otherwise provided, by law.” No particular qualification was necessary to become a justice of the peace—but he was required to take the oath prescribed in the constitution, before he entered on the execution of his official duties.

Justices of the peace, were, collectively and respectively, *conservators* of the peace in their counties—they had jurisdiction, severally, “of all causes of less value than five pounds current money, or one thousand pounds of tobacco:” if judgment was for less than one half of either, it was final; if for more than fifty shillings, or five hundred pounds of tobacco, an appeal lay to the court of quarter sessions. They could issue attachments, within the same limits, to arrest the goods of absconding defendants, at the instance of a plaintiff, on oath, “that the

party was removing out of the county privately, or that he so absconds, or conceals himself, that a warrant cannot be served upon him."

The county court, was to hold a monthly session in the court house, or other place assigned by law, where there was no court house—any *three* justices to be a quorum; with power to determine all causes depending in such court; and the right to adjourn from day to day. They were to take cognizance of all cases of wills, letters of administration, mills, roads, the appointment of guardians, and the settlement of their accounts; the admission of deeds, and other writings to record; and such other matters as are not made cognizable by the court of quarter sessions.

A court of quarter sessions, was also established in each county, to be held at the places respectively fixed on for holding the county courts, and on the same days each, four times in every year: thereby displacing for the time, the county courts—they were to sit six judicial days at every term, if the business required; they were conservators of the peace, and might punish contempts of their authority, in any matter before them.

They had power to hear and determine all causes whatsoever, at the common law, or in chancery, within their respective counties; criminal cases, extending to life or limb, excepted. They took cognizance of escheats, and forfeitures—and they might award writs of *ne exeat*, injunction, and *habeas corpus*; while any justice might take recognisance of special bail, and issue attachments against the goods of absconding debtors. They were to empanel grand juries—to be attended by the sheriff and other officers, as formerly—taking for their guide such rules of proceeding, as had been observed in the former courts of quarter session, and the district court: and they were respectively to appoint their own clerks.

Where any person, not being a slave, was charged upon oath before a justice, of a court of quarter session, with having committed any criminal offence, which in the opinion of such justice ought to be examined into by the court, he was to commit

the person charged, 'to the county jail; issue his warrant to summon the other justices to meet at the court house, on a day certain, not less than five nor more than ten days from the date; to hold a court for the examination of the fact; and to consider, whether the prisoner should be discharged, or tried in the court of quarter sessions, or sent to the court of oyer and terminer. In either case of trial, the witnesses were to be recognised to attend. The defendant was entitled to process for his witnesses, to have them served by the sheriff, &c.: upon which the witnesses were required to attend, as in other cases.

Judgments of the criminal kind, in the courts of quarter sessions, extended only to fine, and imprisonment. In cases, affecting life or limb, the prisoner was sent to the public jail; and thence taken, by order of law, to be tried by a jury of twelve men, upon an indictment of a grand jury, in the court of oyer and terminer; and which consisting of three judges, was to hold two terms in the year; and from whose decision, there was neither appeal, nor writ of error.

The court, had jurisdiction, to hear, and decide, in all cases of treason, murder, felony, and other crimes and misdemeanors, which should be brought before them: under the laws of the commonwealth.

The outline here drawn, is believed to be sufficiently minute, and distinct, for the purpose of history; especially, as the subject is familiar to every reader; while it is to be seen in all its details in the statute itself. There is, however, a further task to be performed, of no small moment to such as desire to penetrate into the mystery of the frequent changes which have taken place in this department of the government; forever so intimately connected with the repose, the safety, and the prosperity of the people—and this is to be executed, by a like sketch, of those changes themselves.

There were some circumstances which transpired on the passage of the original act, which merit commemoration, as they present a feature of the times. It was then said, that the draft of the bill was furnished by the attorney general; drawn

as to the organization of the different courts, so as to leave the appointment of the judges of each, under the constitution, with the governor, and senate.

Conformably to this idea, and regarding the important jurisdictions about to be vested; the bill denominated those, who were to fill the court of quarter sessions, "*judges*;" and it so passed the two houses. After it was presented to the governor, for his consideration; either himself, or else some familiar prompter, had the sagacity to discover, that if the courts should be filled with *JUDGES*, the incumbents would be excluded, by the constitution, from holding seats, in the legislature. The governor, at once comprehending the profundity of the suggestion, if not of his own making, and yielding to its import, returned the bill, with that, as his reason for not signing it. The matter, was however, easily accommodated. The legislature, at the time, containing a large proportion of "*justices of the peace*;" who were indeed, constitutionally eligible under that title, and who, accustomed under the Virginia system, to hold quarter sessions, and a seat in the legislature, would no doubt, like still to do both—very promptly perceived the force of the governor's argument, and amended the bill; by striking out the term "*judge*," and inserting in its place, "*justice of the peace*." It was not worth while to encumber the journal with it, and probably it is not there. But as an evidence of the fact, reference is made to the printed law, section the eighth, where the word "*judge*," escaped, from the general destruction of its kind, like one of Job's men, to vouch for the fact, if not to tell the news.

By this manœuvre, the way was opened, and the foundation laid, for a violation of the constitution; as incorrect in effect, as it was gross, and reprehensible, in its motive. The judicial, and legislative powers were thus united in the same persons, in a great number of instances; as justices of the peace, holding quarter session courts, with a jurisdiction, coextensive with common law, and chancery, they were often elected members of the legislature; where they could give themselves powers, privileges, emoluments, and immunities. Nor was it before

the session '94, although previously attempted, that "quarter session judges," could be excluded from "the house of representatives." Because they had been commissioned, "justices of the peace," not "judges."

Giving an example, of the little respect paid to one of the fundamental principles of *free government*, the division of power, most explicitly laid down, in the constitution of Kentucky. Thus early, affording auguries, of the frequent violations since inflicted, on that instrument; and of the futility of the idea, that the people themselves, are its proper, and only guardians. As it was the people who elected these "justices," to become "legislators;" after they had been commissioned judges in fact.

The other act, referred to, is entitled, "An act to amend an act entitled 'An act to establish district courts in this commonwealth.'" This act, established a general court, to be held at Frankfort half yearly, by the judges of the district courts, or such of them, as should attend. It was therefore, a court, or no court, as the judges pleased; and such it has in a manner remained.

To this court, jurisdiction was given in all causes, suits and motions, against public debtors, sheriffs, clerks of superior, and inferior courts, collectors of public money, and public debtors of every denomination; for, and in behalf of the commonwealth. It was to appoint its clerk, who was to receive for his services, such fees, as the clerks of the quarter session courts, received.

Many provisions were in this act concerning the district courts; some new, and some but repetition. One thing however, deserving notice, is, that the criminal jurisdiction, was again dispersed, among the several district courts—each of which, were to exercise it separately, and to the extent of the district. Details are omitted—all former laws, within the purview of this act, were repealed: it only filled five pages.

At this session, of 1796, there were other important, and extensive laws passed, affecting the administration of justice, in the various courts—the titles to which, will be recited, as indicative of their objects; and but little else said; both for



want of room, and because details of practice are not required. The titles are as follow:

1st. "An act to reduce into one, the several acts, or parts of acts, concerning limitations of actions." Containing three pages.

2d. "An act to reduce into one the several acts concerning the examination and trial of criminals, grand, and petit juries, venuries, and for other purposes." Containing sixty-one sections, and twelve pages.

3d. "An act to reduce into one the several acts for preventing vexatious suits, and regulating proceedings in civil cases." This act has forty-five sections; and with a prelection of acts affected by it, fills twenty-two pages, and is without a repealing clause.

4th. "An act to reduce into one the several acts directing the rules and proceedings in the courts of chancery." This act has thirty-eight sections, and occupies seven pages.

5th. "An act to reduce into one the several acts, and parts of acts concerning executions, and for the relief of insolvent debtors." This act is divided into thirty-eight sections, and fills nineteen pages.

It has already appeared that an act passed at this session, *establishing the court of appeals*, without any reference to the law, or the court, then and previously in existence. And which is now mentioned, merely in its order.

6th. "An act directing the method of proceeding in courts of equity, against absent debtors, or other absent defendants, and for settling the proceedings, on attachments against absconding debtors." Occupying only about five pages, and ten sections. This act is chiefly repetition.

7th. "An act directing the mode of suing out and prosecuting writs of habeas corpus."

In this review, it appears that the courts, had rest, during the remaining existence of the first constitution.

And now, to reascend to the first session of the year 1792; it will be found, still to afford, various topics for history, of an interesting nature.

Under the title of "An act concerning strays"; there will be matter arranged, calculated to produce an inquiring reflection; Whence can proceed, this love of change? this never ceasing legislation?

The act of June, was amended by another of November in the same year. In the year 1794, "An act to amend and reduce into one the several acts concerning strays," was passed; which repealed all former laws, on the subject. The next year, the last act was amended. There was a session of January 1798, at which a new act was made to reduce into one the several acts concerning strays. And this stood until after the change of government, which took effect in 1800.

It will appear, that the county court justices, now become legislators, were not inattentive to themselves. In the Virginia system of jurisprudence, justices of the peace received no fees; although they were conservators of the peace, and held jurisdiction in their chambers, and also filled both the county, and quarter session courts. But they were successively sheriffs of their respective counties for two years each—as such they received fees; and such were their only pecuniary consideration, or compensation, for official services.

An arrangement, attended by the most beneficial effects upon the manners, customs, and habits, of both magistrates, and people. So far from the justice stirring up strife, and promoting litigation; he became the peace maker—advised forbearance—admonished the delinquent—and when nothing else would do, he acted judicially on the case; but then, there were no items, of pence to be charged in the bill of costs for him. He defiled not his fingers with justices' fees. In no country was justice more correctly administered—no country, ever produced a more respectable, decent, or orderly yeomanry, than did Virginia, down to the period of separation. Kentucky had felt the influence; but it became impregnated with foreign mixtures, and ingredients of corruption.

The sheriffs, were to be elected by the people; and that not only turned those who would be sheriffs, into demagogues—but it furnished the justices of the peace with a plausible

pretext for demanding fees—and to justify the claim, the law alluded to, was enacted.

	s.	d.
For issuing a warrant,	0	9
For a summons for a witness,	0	6
For entering judgment, and filing papers,	1	0
For giving a certificate of an oath,	0	4
For posting a stray,	0	12
For issuing an execution,	0	8
For issuing an attachment,	0	12
For taking bond,	1	6
For copy of judgment and papers,	1	6
For peace, or search warrant,	1	3
For attending to take depositions, or on an arbitration, (for each day,)	4	0

A modest list—no ways mercenary; it is to be confessed: and yet, it ill assorts with the office, of the judge; at least, in the opinion of some, who have reflected deeply on its effects. Especially when they might also be legislators.

The subject is, however, deemed worthy of further attention. At the November session, the legislature still composed of the same members, an act was passed “for regulating the fees of county court justices.” And the following allowances were made, to be paid by the party, at whose request the business should be done, taxed in the costs, collected as executions are, and accounted for in the same manner:

For issuing a warrant for debt,	0	9
For a summons for a witness,	0	6
For judgment,	1	0
For recording judgment, and filing papers,	1	0
For execution, and recording return,	1	0
For a certificate of an oath,	0	9
For posting a stray,	0	9
For issuing an attachment,	1	0
For taking bond,	1	6
For summoning garnishe,	1	0
For examining garnishe, and taking a schedule of effects,	1	0

For an order of sale,	1	0
For copy of judgment and papers,	1	6
For a peace, or search warrant,	1	3
For attending to take depositions, or on an arbitration, (each day,)	4	0
For taking special bail,	1	6
For a warrant to apprehend a felon,	1	3
For a mittimus,	1	3

In criminal cases however, the justice was not to collect his fees before they were collected off the person convicted.

For certifying a power of attorney or other writing	1	0
For examining a runaway slave, and certificate	1	3
For a hue and cry, and escape warrant,	1	3
For retaking recognisance,	1	3

And the former law was repealed. The justices were enjoined to keep a fair record.

These two acts are a pretty fair specimen of the mode practised in amending laws, the old law was recited, to which was added the new matter—not always indeed, as considerable, as in this instance.

At the next session, the law was again amended: but very evidently by a different set of men. After the passage of the other laws, and especially the latter, many justices betook themselves to office business, and with the help of active constables, kept themselves pretty generally employed. One in the neighbourhood of Lexington, was said to have made three hundred dollars in the year—and it has even been affirmed, that it laid the foundation of a mercantile fortune, amassed upon the capital.

The act of 1793, was however calculated to check judicial speculation, and enterprise. It recited that former fees, were more than sufficient—it repealed the law in toto—and of the twenty-two charges specified, it only re-enacted, eleven: some of them were reduced. A very pernicious practice of putting blank warrants into the hands of constables, to be by them filled up, was prohibited—under penalty—and various regulations made respecting future proceedings.

In 1798, the subject was again revised, and the following fees allowed the justices:

For issuing a warrant for any sum,	12 1-2 cts
For a copy of judgment and papers on an appeal,	50
For certificate of an oath where required,	12 1-2
For posting a stray, and the whole service,	17
For issuing an attachment, and taking bond,	50
For summoning garnishee and taking schedule of effects,	25
For order of sale,	12 1-2
For a peace or search warrant,	12 1-2
For attending to take depositions, per day,	75
For taking recognisance of special bail,	12 1-2
For certifying power of attorney or deed of conveyance,	12 1-2
For issuing a hue and cry and escape warrant, each,	25
For issuing an execution,	17

They were restrained from all other fees, under the penalty of five pounds, to be recovered with costs, on motion or information by the party aggrieved. They were authorized to put their fee bills into the hands of the sheriff, or constable, for collection.

In the session of 1799, all the fees of the justices, except for attending to take depositions, and to swear appraisers; which were seventy-five cents, each, per day, were taken away, by a repeal of the law, allowing them.

Thus strongly indicating the contest, carried on between the people, and this class of public officers, by the oscillation in their fees.

The second constitution, as the first did, was to commence its operation, upon a description of magistracy of great importance to the community; eligible to the legislature; and holding judicial powers of great magnitude and extent; almost divested of fees—but once more to renew, or begin, a career for power, and emolument. After a seven years' race under the first constitution, the official jockies, were thrown out of the

course: but although they have been hard run since, and sometimes distanced; they have again, and again, returned to the track, resumed the heats, and most evidently, gained the "vantage ground," in the contest. And no wonder, they possess the never failing stimulus, of self interest to actuate them; and an influence at times very great, in making the laws; while their opponents, acting only by impulses, and those not very strong, nor well concerted, lose, for the want of persevering caution, what at times they have gained, by a determined essay of their positive strength.

This subject will be renewed, under the present constitution; as one of no trivial interest to the community. Either the justices of the peace, should have no seat in the legislature, or no fees, or emoluments of office, as judges, in any capacity whatever.

It is anti-republican for the same set of men to make the laws, and adjudicate on them; to legislate jurisdiction, and emoluments, to themselves—and to blend the office of magistrate, with the seeker after popularity. What means the constitution, when it declares that neither the same departments, nor individuals, should exercise legislative, and executive, or judicial, power? It then asserts the principle, which is violated by the members of courts, holding seats in the legislature—and of courts so numerous, as to be sufficient, to fill the general assembly; whence the impropriety, becomes glaring. Again: What means the constitution where it disqualifies members of the general assembly, from receiving an appointment to any office which shall have been created, or the emoluments of which shall have been increased, while they were members; and for one year thereafter? It means, that men, in making laws shall not be placed under the operation of selfish motives, ever having a tendency to corrupt. It means, that when justices of the peace, were permitted to be eligible to the legislature, that they were not to engross to themselves the jurisdiction of other courts, and the employments and emoluments of other men. These remarks, at present general; will be exemplified, in the sequel of this history.

A fourth new county, was made at the first session, for which Lincoln furnished the material. It was enacted, that from and after the first day of September then next ensuing, the county of Lincoln should be divided into two distinct counties—that all of said county included within lines—“beginning at the Elk lick on Little Barren river, thence a south course to the North Carolina line; thence along the said line to the Mississippi; thence up the same to the mouth of the Ohio, and up the same to the mouth of Green river; then up the same to the mouth of Little Barren river; thence up the same to the beginning:” shall be a county, called and known by the name of Logan; and the residue shall retain the name of Lincoln. “An act concerning sheriffs,” passed at the June session, provides that if any county should fail to elect a sheriff, or if any one elected, should die, or the office become vacant; that the governor, with the concurrence of the senate, should appoint, to fill the vacancy: and also where a new county was made, to take effect after any general election. Similar provisions applied to coroners, the provisional substitute, for sheriffs. This was according to the constitution; which, although it placed the election of both sheriff, and coroner, in the people, once in three years, gave to the governor, and senate, the filling of any intermediate vacancies, in those offices. While the rest of the act, related of course to the details of official duty, gleaned principally from the existing laws. Nor did this act escape the usual fate of others. Amendment succeeded amendment; and change followed change; which are exemplified by an act of the November session in the same year—one of 1794; and another in 1795—the last, reciting that great injuries might arise to the citizens of the commonwealth, from an admission of improper persons into the legislature—enacts that no principal nor deputy sheriff, should be eligible to either house of the general assembly, until one year after he shall have completed his collections for the public, paid the money into the treasury, and obtained a quietus from the auditor. This act was the result of experience, and to guard against such abuses in future, as had then occurred. The evil was of

the nature to threaten bankruptcy to the treasury—as the sheriff, by neglecting and compromising his duties, in the pursuit of popularity, could leave the taxes unpaid; and as a legislator, pass laws to excuse himself, for his defalcations: the regular consequence of his popular eligibility. The constitution by fair construction, excluded the sheriff, as holding an office of *profit* under the commonwealth, from a seat in the legislature, during his continuance in office. It was however, to construe the word “profit,” to mean “fixed salary only,” and the prohibition was removed. Nor did it appear, by the constitution to exist a day after the individual, was out of office as sheriff.

The act as it passed, suggests, at least, the question, how far can the legislature disqualify, any one, not disqualified, by the constitution to hold, any office; should it even be a seat, in their own body? Each house, it is true, have the unlimited right to judge of the qualifications of its own members. But then they act separately—they may decide differently—and therefore could not apply an adequate remedy to the evil treated of, by any means short of a law. More may be said on this subject hereafter, when an accumulation of similar acts, shall justify its resumption.

In the year 1796, the acts of former years were reduced into one—and in 1799, there was another act passed relative to the arrearages of taxes in the hands of sheriffs, or not then collected, by them; for which time was given, to make collections.

There were other acts passed at the June session; but deeming it necessary only, to notice such as introduced some principle, or laid the foundation of future legislation; an advance will be made to the session of November, 1792; and a similar course pursued in relation to the acts of that period; after inserting a narrative of the hostile occurrences of the year.

It has been seen that Kentucky made her political transition from being a district of Virginia, to the condition of a free and independent state, in the midst of an Indian war on the whole extent of her frontiers; and that the effort of the general government to obtain peace, as well by treaty, as by arms, had



hitherto failed of success. So that the new state found herself involved in the heat and bustle of an irritating and vexatious contest, destructive to individuals, and expensive to the public. In the progress, and continuance of which, although the safety of the commonwealth was not to be despaired of, yet much private property might be lost; while little or nothing could be gained from an enemy, both valiant and poor.

The rumour of Indians, being in the country in July, 1792, was soon after confirmed, by their depredations. Within eight miles of Frankfort the trail of about twenty was seen, bearing in a direction for the settlements on Elkhorn, where they stole horses. They had, just before this occurrence, tomahawked three women near Long lick; and been seen watching Eastin's mill, on Bear Grass.

The settlers on Russell's creek, south of Green river, felt themselves so much annoyed, that they petitioned the governor for assistance. And fancied they found some relief, even in the contemplation of obtaining the object of their petition, from one so near them.

About the last of the month, one man was killed, and two others wounded, on Brashear's creek—and a party of savages seen near the Big lick, on Eagle creek.

In August, seven Indians attacked the dwelling house of Mr. Stephenson, in Madison county. They forced open the door, in the morning before the family had risen, and fired into the beds, where the members of it lay. The arm and thigh of Mrs. Stephenson were broken, thereby; while the rest escaped the shot. Mr. Stephenson springing out of bed, made battle, with the enemy; and being immediately assisted by two young men, who lived with him—they killed one of the Indians, and expelled the others: but one of the young men, was killed, and Stephenson himself, badly wounded.

A few days after this rencounter, Major Brown of Nelson county, hearing of a party of the enemy on the Rolling fork of Salt river, raised a company of volunteers, and went in search of them. Falling on their trail, he pursued, and came up with them; a skirmish immediately ensued, with the rear, consisting

of twelve warriors; four of whom were killed, and the rest dispersed. The major lost one man, killed; and had two others wounded.

In September, a small company going through the wilderness, to Holston, were fired on by Indians, lying in ambush, who killed one, and crippled another.

About the 6th of November, Major John Adair, (the present governor) commanding a company of Kentucky militia, posted half a mile from fort St. Clair, was attacked in his camp, by a superior Indian force; and after a gallant resistance, compelled to retreat to the fort: with the loss of six men killed, the camp equipage, and one hundred and forty packhorses taken—five men were wounded, but escaped. The enemy had two men killed; their wounded, if any, not known.

General Wilkinson, who then commanded the United States' troops, bestowed encomiums on the major, for his good conduct; and on his men, for their bravery.

Towards the close of the year, what had been apprehended, with great anxiety, the death of Colonel John Hardin, who had been sent, with overtures of peace to the Indians, was reduced to a certainty. He had been solicited by General Wilkinson, commanding at fort Washington, early in the spring to leave his home, and private affairs, to become the bearer of a white flag, as the messenger of peace, to the hostile tribes of savages, northwest of the Ohio: as the general's letter expressed, "from the Delawares, to the Potawatomies." Says he: "I wish you to undertake the business; because you are better qualified for it, than any man of my acquaintance; and because I think it will lead to something of advantage to you." The service was believed by both, to be extremely dangerous; and might be fatal to the undertaker. It could, in fact, have been performed by many persons in the public service, just as well, as by Colonel Hardin. For, whoever the bearer of the flag, might have been, he would have a written speech, instructions, &c. with an interpreter, and was but

to invite the Indians to a peace, without being authorized to conclude a treaty.

Whether the general, was really the friend of Hardin, and candid in his expressions of a desire to serve him—and thought such employment conducive to that end: or viewing him as a rival in fame, who might afterwards be in his way, if not seasonably put out of it—and hence induced to embrace the opportunity, so conveniently covered by the proposed mission, for effecting his purpose of removal, as by some was strongly suspected; there is no means possessed, of knowing. Certain it is, that Wilkinson, persuaded, and pressed Hardin, to the undertaking—as he did Major Trueman, an officer of great merit, under his command; and with whom he was known to be at variance, to undertake a like commission, in the same season, to another section of hostile Indians; and who shared a fate, similar, to that of Colonel Hardin. They were both known to be men, of great firmness of character, and a ready self devotion to dangerous enterprise, when their country called. They were both called—and both cut off.

Nor will the general's moral character, suffer any diminution of value, in the estimation of those who know him, and duly appreciate it, by the insinuation, as to his motive for employing Colonel Hardin. For, notwithstanding he was in the regular army, and had ostensibly withdrawn from Kentucky; yet was he still, connected with men here, in the Spanish intrigue—between whom, and himself, there was a reciprocity of expectation, that in the event of things taking the turn which they desired to give them, that Hardin and himself, might be something more than rivals for fame—they might be antagonists in the field. Since Wilkinson, could not have formed the hope, of seducing his fidelity. It is, therefore, possible, that a death which gave great pain to the people in general, might have had a very different effect, on the sensibility of Wilkinson.

The particular manner of that death, has not been ascertained, with any certainty of detail. Even the account which

has been given by report, is not very circumstantial. What has been learned, is, that Colonel Hardin, attended by his interpreter, on his route towards the Miami villages, arrived at an Indian camp, about a day's journey from where fort Defiance was afterwards built, by General Wayne, and nearly the same distance from a town inhabited by Shawances, and Delawares—that he was well received by the Indians in camp, but had not been long there, before five Delawares came in from the town: upon learning of which, the colonel proposed to them, to go with him, the same evening, to the place. They however refused to go back that day, but seemed peaceably disposed—and he concluded, to camp with the Indians, the ensuing night; which he did, without molestation. In the morning, however, without provocation or particular reason, a parcel of them shot him to death. If with any peculiar circumstances of barbarity, is not known. They seized his horse, gun, and saddlebags—expecting, no doubt, in addition to the two former, that they would find money, and presents, in the latter. His companion, they made a prisoner, and taking him with them, on the road towards Sandusky, murdered him, by the way.

It has been further said, that when the news was carried to town, “that a white man with a peace talk had been killed at the camp,” that it excited a great ferment; and that the murderers were much censured. Which is probably true. For perhaps there is no condition of the human race, when exempt from the passion of revenge, or the allurements of plunder, so ignorant, or depraved, as not to cherish sentiments of respect for the harbinger of peace. Of Colonel Hardin, they had no personal knowledge; although they very likely had heard of him. Yet, if they had known him terrible in battle, they also should have remembered him magnanimous in victory; and kind, and hospitable in peace. Never taking life, when he could make a prisoner—and having at that time two, in his household; who for several years had been treated as members of his family; with the intention of restoring them to their nation, on the return of peace; and which was accordingly done, by order of his widow.

Colonel Hardin, fell in the thirty-ninth year of his age; in the prime of a life of much usefulness, and after he had by a series of exertions, progressively unfolded many virtuous traits of character. It was by these, he had gained his standing in society. One so interwoven with the respect and affection of his countrymen, that combined with his active disposition, and experience, could but have pointed him out, and enabled him, had he lived, to have rendered important service, of the highest order.

In corroboration of these suggestions, it was stated, that, while he was out, and before his death was known—upon Kentucky's becoming a state, he was appointed a justice of the quarter sessions, in Washington county; where he had resided; and general, of the first brigade of Kentucky militia.

To this eminence, was he raised, for services rendered, and not by address, or intrigue—for never was man who loved honourable distinction, farther from the arts of popularity, or office hunting.

Inasmuch, however, as example teaches more than precept; and mankind are deficient in practising the means, rather than in devising the ends, of self advancement; a short biographical memoir of him, cannot be unacceptable to the reader, in a country, where every man of real worth, is the second maker of himself. Besides, it is within the express design of this history, and therefore to be inserted, of course.

The subject of this biography, was born in Fauquier county, Virginia, the 1st of October, 1753. His parents were poor people, who obtained an honest living, by their labour. Martin Hardin, the father, removed from Fauquier, to George's creek, of Monongahela, when his son John was about twelve years of age. He had already learned the use of the rifle, and delighted in hunting the deer.

The new settlement, was quite a frontier. Old Mr. Hardin had thought it in Virginia; but it turned out when the line was settled, and run, that he was in Pennsylvania; it gave the old man some uneasiness—but the youth said, "he did not care, he would be a Virginian yet."

Hunting was in their new situation, even a necessary occupation; it was not long before the Indians broke out, and war on the frontier, was added to the former motive for carrying the rifle. Young Hardin, finding even in the first of these, free scope for the exercise of his active enterprising disposition, became a hunter. And being not recalled to any literary occupation, for there was no school; hunting soon became his amusement, and delight. With his rifle, he traversed, the vales, or crossed the hills, or climbed the mountains, in search of the deer, the bear, or the elk; insensible of fatigue, and ruminating on the various modes of detecting their feeding, licking, or hiding places; until he became one of the most expert of the craft. The rapidity, and exactness with which he pointed his rifle, gave to his shot, whatever fell beneath his eye. And such was his visual ray, that nothing moving within its compass, could escape its glance. A still higher gratification, and one which gave a zest to all besides, was the service which he rendered two or three families, of friends; whom he supplied with meat, by means of his gun.

In the spring of the year 1774, rendered memorable in Virginia, by the expedition of Governor Dunmore, against the Indians, then at war; young Hardin, not then twenty-one years of age, was appointed an ensign in a militia company. In the August ensuing, he volunteered with Captain Zack Morgan, had an action with a party of Indians, in which he was wounded, while on one knee, the better to support his rifle, in aiming it against the enemy. The ball struck his thigh on the outer side, ranged up it about seven inches; and lodged near the groin—whence it never was extracted. The enemy were beaten, and fled. Thus early, was he initiated into the mysteries of Indian warfare.

Before Ensign Hardin, recovered from this wound, or could dispense with his crutches, he joined Dunmore, on his march to the Indian towns. In these transactions, is to be seen the spirit, which prompts, to the exercise of hunting, and the enterprise of war; the spirit, which elevates men, into heroes; and devotes them to the service of their species—and to fame.

Soon after the peace which ensued, Hardin turned his attention towards Kentucky, as to a scene for new adventure; and had actually prepared for the journey, with Colonel Crawford, and some others; but this was declined—probably on account of the increasing rumours of approaching war, on the atlantic coast. For, his ears, seem to have been forever open to the voice of Bellona.

The American congress, having determined to raise an army, the business of recruiting, was extended into the part of the country, where young Hardin resided, in 1776; to which he applied himself. His success enabled him to join the camp, with the command of a second lieutenant. He was afterwards attached to Morgan's rifle corps—which was generally upon the lines: and with which he served, until his resignation of a first lieutenant's commission, in December, 1779. In the mean time, he acquired, and held, a high place in the confidence and esteem of General Daniel Morgan: By whom he was often selected, for enterprises, of peril, which required discretion and intrepidity combined, to ensure success, in their execution.

There are a few anecdotes committed to tradition, that deserve to be commemorated. While with the northern army, he was sent out on a reconnoitering excursion, with orders to take a prisoner, for the purpose of obtaining information. Marching silently, in advance of his party, on rising to the top of an abrupt hill, he met two or three British soldiers, and a Mohawk Indian. The moment was both critical, and awful. Hardin felt no hesitation—his rifle was instantly presented, and they, ordered to surrender. The British, immediately threw down their arms—the Indian, clubbed his gun. They stood; while he, continued to advance on them; but none of his men having come up with him, and thinking that he might want some assistance, he turned his head a little as he called to them to come on; and at this moment, the Indian warrior, observing his eye withdrawn from him, reversed his gun, with a rapid motion, in order to shoot Hardin; when he, catching in his vision the gleam of light which was reflected from the polished barrel of this instrument of death, and with equal

rapidity apprehending its meaning, was prompt to prevent the dire effect. He brings his rifle to a level, in his own hands—and fires her—without raising her to his face—he had not time—the attempt would have given the Indian the first fire—on that depended life, and death—he gained it; and gave the Indian a mortal wound: who, also firing in the succeeding moment, sent his ball through Hardin's hair.

What a combination of circumstances! What facility—what precision—what fortitude, is here displayed. A happy association, of intellect, and dexterity, ensures his superiority, and saves his life.

The rest of the party, made no resistance, but were marched to camp. On this occasion, Hardin received the thanks of General Gates.

At another time, while the British held Philadelphia, and General Washington was endeavouring to circumscribe them within as narrow bounds as possible; Hardin, being on the lines with his lieutenant's command, in order to pick up stragglers; and receiving intelligence that some of the tories, from the back counties, were driving several wagons laden with provisions, down to the city; he determined at every hazard to seize them. Accordingly he threw himself and party, on their route; and pursued them, within sight of the enemy's outposts, before he came up with the wagons; which, with the escort, he captured—wheeled about the teams, and drove them to his own camp.

Before he left the army, he was offered a major's commission in a regiment about to be raised—but he declined it; alleging that he thought he could be of most service where he was. Whether it was, that he thought himself bound to take some care of his own pecuniary affairs, then but limited in extent; by securing Kentucky land—or that the time for which his men had been enlisted was expired; and he did not care to command others—or the concurrence of both these considerations—or the Indian war, on the frontiers—which induced him to leave the regular service, is not known. But



he resigned, and returned to George's creek; in 1779, as before was said.

He had taken measures to secure lands in Kentucky: But if he obtained a settlement and pre-emption, or a pre-emption only, it is presumed, that it was by means of a friend, or by hiring some person to make the requisite improvement for him, in the country—a thing not unfrequently done in those days.

It appears that, in 1780, the next year after leaving the army, he was in Kentucky, and located lands on treasury warrants, for himself, and sundry friends, and relations. Early in 1781, he sent a younger brother to have his entries for land surveyed; in order that he might secure the land by early patents. Correctly inferring from what he had seen, that titles would be much involved in dispute; and that the elder grant, would be a material circumstance in the adjustment. Hearing that Richard May, was killed by the Indians, and apprehending that the surveying might be suspended, through a fear of the enemy, he came to the country himself, and had the business completed. To this prudent course of conduct, may be attributed the almost entire escape from litigation, and the safety of the lands taken up by him. Certainly, one of the most laudable modes of acquiring property, since it deprives no man of a right; and appropriates, at a stipulated price, that which was previously waste.

In April, 1786, having a wife and family, he removed them from Monongahela, to Pleasant run, in Nelson, afterwards Washington county, Kentucky.

In the same year, he volunteered under General Clark, for the Wabash expedition; and was appointed quartermaster—without funds. It is evidence, nevertheless, of the good repute in which he was held.

There was in 1787 and '88, an abatement of Indian hostilities—at least, no formidable expedition took place, which called for retaliation. In 1789, among other depredations, a considerable party of Indians stole the horses of Mr. Hardin, at the time, called Major, and those of his neighbours; without

so much, as leaving him one for the plough. The marauders were pursued; but escaped, by crossing the Ohio.

In the course of the year, he was appointed county lieutenant, with the rank of colonel, which gave him the command of the militia of the county.

As the summer advanced, he determined to cross the Ohio with a strong party of his militia, and scour the country for some miles out; in order, if there were any camps of Indians in that quarter, to break them up. Accordingly, he made his desire of assembling volunteers known; and was joined at the place of rendezvous, by two hundred mounted men, ready for the enterprise. With these he proceeded across the river, and on one of the branches of the Wabash, fell on a camp of about thirty Shawanees—whom he attacked, and defeated, with the loss of nine killed, and two taken prisoners. Two of his own party were wounded—none killed, nor taken. From these Indians, Colonel Hardin recovered two of the horses, and some colts which had been stolen in the spring of the year. And it is worthy of note, that no more horses were stolen from that neighbourhood, during the residue of the war.

His subsequent military transactions have already been interwoven with similar occurrences, into the general history; and need not be repeated—for they will not be forgotten.

There was no expedition into the Indian country, after he settled in Kentucky, that he was not on; except that of General St. Clair. It was his intention to have been on that, but he was prevented by accidentally wounding himself with a carpenter's adze; which he occasionally used. This wound produced a serious lameness; from which he recovered.

He was a man of unassuming manners, and great gentleness of deportment; yet of singular firmness, and inflexibility, as to matters of truth and justice. If he loved popularity, he sacrificed no principle to gain, none to retain, the possession. And, although he was popular, in a high degree, he used it to no purpose of self aggrandizement. Sinister designs, he never formed. He could but censure the conduct of some of his officers, on General Harmar's campaign—yet, he did it with

the greatest delicacy. His own conduct was arraigned—he bore it with composure; and demanded a legal inquiry. The character, and conduct, of his commanding general, was highly censured—and popular resentment, uncertain of its object, but irritated by disastrous events, seemed to demand a victim. Harmar appeared, all but bound in fillets for sacrifice—he stood firm in his defence; and rescued him, by his manly adherence to truth, from the very foot of the altar; and at the imminent risk of his own favour with the people. It mattered not: he knew no safeguards, but firmness, veracity, and honour.

Although unanimously acquitted by the court of inquiry, of the charges alleged against himself; he was undoubtedly humiliated in his own opinion, by the occurrences of the expedition; for on that of General Scott, which took place afterwards, he left home as a private of Captain Wilson's company; intending to serve in that capacity. At the general rendezvous, however, he was not permitted to proceed in that character. The part he acted, has been already mentioned.

It was not that nature had distinguished Colonel Hardin, by the liberal gift of splendid qualities; but she had with the dexterous hand of care, mixed together her best elements, in his temperature—it was not that he possessed literary acquirements; for even his English education, was very imperfect—it was not that he had gained any brilliant victories; on the contrary, he had been repeatedly defeated—no; it was, because his readiness to serve his country, was the most conspicuous trait in his character—it was, that he never avoided the post of danger—it was, that no man could attach to him any real fault; or shew, that the thing done by him, could have been better done—it was because, of his sound practical good sense, his capacity for what he undertook, the sterling worth of his moral feelings: it was, in fine, for the compound of his physical, and intellectual services, and capabilities, that he was beloved, confided in, esteemed, and employed in public office.

For several years previous to his death, he had been a professor of religion in the Methodist connexion. He left six children; three of each sex. The government of the United States.

enabled the mother to educate the sons—not that such aid was really necessary; but it was convenient; intended, however, on the part of the government, rather as an acknowledgment of the meritorious devotedness of the father to the public service, than as a pecuniary aid: having, nevertheless, for its recommendation, the quality of compensation for the loss, which the widow and family had sustained.

Colonel Hardin, had in his lifetime laid the foundation of an ample estate, in land; by locating military warrants between Scioto, and Little Miami. His personal attention was indispensable to perfect, and realize, this part of his fortune. His death suspended the work. Nor has it been practicable to complete the expected superstructure without him: so that, in fact, nearly the whole has been lost, and his family deprived of almost all benefit from what he had done. It may, however, be considered as flourishing, and highly respectable.

The subject of courts, of the utmost importance to the personal rights of the citizens, and to the peace and wellbeing of the public, will be pursued; so as to present, in a series, the course of legislation in relation to them.

The outline, is, that of a system commencing with the county court, and rising by gradation through the court of quarter sessions, and court of oyer and terminer, to the court of appeals; with *original* and *appellate* jurisdiction—in effect, two courts.

These, with the justices of the peace, embraced the civil, and criminal, judicial power of the state; except that portion, which was left, to be exercised, by courts martial, under militia laws.

It would seem, that if any thing could be rendered consistent, and permanent, it should be the system by which justice, itself always uniform, was to be administered, to the same people. What derangement! what incalculable injuries! result from the contrary!! It is, however, to give examples, by reciting facts; not to offer precepts, by exclamation; that the topic already noticed, has been resumed.

The county court, is to be considered, as a corporation, or municipality of an original, complicated, and comprehensive

character, of primary usefulness, and extensive effect, upon the local affairs of the community—embracing the rights, interests, moral habits, and all the rudiments of government, in such a manner, as to render it an object of momentous concern, to the legislature, and to the people.

In the first place, its members, as *justices of the peace*, possess and exercise, as conservators of good order, and as judicial officers, individually authorized to hold their tribunals, without limit, as to time, or place; and as members of the courts, an almost infinitude of powers: to which are added, eligibility to the legislature—offices that require great virtues, and no less qualifications, to fit them for either place. Yet, who are these justices in general? It is, however to be remarked, that what cannot be well done, may be ill done—when sometimes from necessity, often from negligence, and even from worse motives, the best appointments are not always made: while the people, still more ignorant than their magistrates, are the greater sufferers.

In the system alluded to, in addition to the foregoing powers, a portion of these “justices,” were also the “judges” of the quarter sessions court, vested with jurisdiction, as has been said, of all matters at law, and in equity; not appertaining, to themselves either individually, or as members of the county court, except land cases; which furnished subjects, for the original jurisdiction of the court of appeals—or else such as were cognizant only in a military court. And yet, they were in general, but illiterate men, without one in twenty having any pretensions to a knowledge of jurisprudence. And to these, were intrusted, both the making of the laws, and the adjudications on them.

That the system was not fixed unalterably on the country, was some consolation—that it has been improved, is not to be denied—and that the country has been almost worried to death, by the changes, is a fact equally notorious: its present condition, is truly deplorable.

It is the history of these changes, that is now to be retraced, and connected.

In the fall session of 1792, the act of June was amended. In the mean time, the justices of the peace had been appointed; and more than a majority of the members of the legislature, were in the commission: the constitution, to the contrary, notwithstanding. In the amendatory act, the quarter session justices, being those first named in the commission, were excused from the general drudging duties of a common justice of the peace. The appeal from a single justice, at first to be taken to a *quarter session court*, was henceforth to be taken to the *county court*, on half the amount, previously specified, over which they had jurisdiction: on less than twenty-five shillings, no appeal was allowed. Quarter session courts, to try slaves; any justice, to apprehend persons on a criminal charge. The power, to punish contempts, given to county courts, and to *individual* justices, in the same unlimited terms in which it had been given to the courts of quarter sessions. And thus were cherished "liberty, and equality,"—ever in the mouths of demagogues.

In the year 1793, an act of five pages,—the last for that purpose, but two, under the first constitution,—was passed, to amend the preceding. Appeals from a single justice, were regulated. The county courts, in addition to their former jurisdiction; were to take cognizance of all cases of bastardy—they were authorized to call on the sheriff for settlement, and appoint two of their own body to adjust the account; and if he was found in arrear to the county, judgment might be entered against him, on the report of these commissioners. The justices appointed to settle the account, to receive four shillings per day; to be paid by the county. The court could appoint an attorney at law, as counsel, and levy money on the county, to pay, what they might choose to allow, him.

When a quarter session justice, should be interested in any case in his own court, any other justice of the peace, (regarding seniority) if to be had, might be called into the seat, thus vacated for the time, by the interest, of the regular judge.

Any quarter sessions court clerk, might send a subpoena in chancery to any county, on demand, without assigning cause.

The court, to try presentments by the grand jury, in a summary way, without the intervention of a petit jury, or one of twelve men; and award judgment, and execution; be the sum what it might.

Nonresidents required to give bond for costs, before they could sue in quarter sessions court—residents were not. It occurs here, to introduce, the 2d section of the 4th article of the constitution of the United States—"The citizens of each state shall be entitled to all the privileges, and immunities of citizens in the several states." It seems pertinent, now to ask, if it is either a privilege, or an immunity, to sue for wrongs done, or rights withheld, without giving bond, and security? If it is—any citizen of the United States, although a nonresident, is entitled to it in effect; wherever it will apply. But if to sue, without giving bond and security, is no privilege or immunity, what is it? A natural, and indefeasible right—or a civil privilege, it must be. It seems to be a civil right in a citizen to sue—clearly deducible from the 13th section of the 12th article of the constitution, as follows, viz:

"That all courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law; and right, and justice administered, without sale, denial, or delay." But is not a plain matter of constitutional right, a privilege? And if not, has the constitution of the United States, omitted to secure a community of rights, and secured only a community of privileges? And what are those privileges, if to sue without giving bond and security for costs, be not one of them?

Doubtless, the intent of the constitution was to place any citizen of the United States going from his own, into any other state, upon an equal footing, as to rights, privileges, and immunities, with the citizens of that state, while he was among them. Whatever right, &c. the citizens held, or could exercise, the same could their visiter, hold and exercise on the like terms. If resident citizens were required to give bond, so might nonresidents. It did not mean, that the nonresident, or itinerant of one state could acquire rights, or privileges, in his resident

state, or elsewhere, and assert them in a state of which he was a *nonresident*. No, the great object was, to fraternise, and harmonize, the citizens of the several states, who are citizens of the United States—that is done by conceding on the part of each state, as the occasion occurs, a free communion of state rights, without condition or restraint, to such citizens of the United States, no matter from what other state they are, as may want, or are in a situation, to receive the concession. “Such as I have, I give unto thee”—fills every demand of hospitality—satisfies every expectation of friendship, and harmonizes every feeling of right, and justice.

On the other hand, if a citizen, having rights in his own state, not common to other states, nor permitted by their laws, such extra rights cannot be claimed, or exercised, within such states, by any citizen. For if they could, it would overturn all state legislation, and give to the laws of other states, at the will of a nonresident citizen of the United States, an ex-territorial effect. It would be subjecting one state to the legislative action of another. It would permit a citizen of a state holding slaves, for example, to introduce them into a state where they were prohibited. In fine, it would produce heats, strifes, and even bloodshed—to the utter subversion of all peace and harmony. Therefore the constitution does not mean, that one state, is to be controlled by another; and still less, if possible, by the citizens individually, who may reside in one, and visit another—but it intended, that each state should within its territories, extend the same rights, privileges, and immunities, to other citizens of the United States, when within its limits, as were possessed, or enjoyed by its own citizens. The right to sue without giving bond for costs, would be one of those privileges; where it was enjoyed by resident citizens of the state.

Another act of two pages, passed at the session of 1795, to amend this court law. The principal object of which seems to have been to give to the quarter sessions court, concurrent jurisdiction, with the district courts, which had been established, by a previous act of the same session, in all civil cases.



The governor was authorized, to fill vacancies in the courts of quarter sessions, upon his own appointment, whether he selected a justice of the peace, or not.

The district court law, passed at this session, is now to be taken up, as a part of the judiciary system of Kentucky.

This act, reciting that the constitution of the court of appeals was equal to a denial of justice, and the expenses burthensome to suiters—took from it the original jurisdiction with which it had been invested.

The state, was then divided into six districts—and Bardstown, Frankfort, Washington, Paris, Lexington, and Danville, fixed on as places at which the courts of their several districts were to be holden twice in each year. Six judges, were to be appointed; who were to agree among themselves, to hold the courts in pairs, during terms of fifteen days, if necessary. They were severally to take an oath—each court to appoint its own clerk—to be attended by the sheriff, of the county, where they sat—and might punish contempts.

District courts, were to have jurisdiction over all persons, causes, matters, and things, at common law, or in chancery, arising within their districts; *except actions of assault and battery, actions for slander, and actions of less value than fifty pounds:* unless in the latter case, they were against justices of the peace.

Among many details for carrying this jurisdiction into effect, occupying twenty odd pages, it is worthy of notice, that *rules* were to be held in the clerk's office monthly, on a day fixed; at which the parties were to enter their allegations, pleadings, and notices; and take their judgments by default, subject to exceptions, and the ultimate judgment of the court: a mode of procedure apparently attended with great convenience, calculated to facilitate preparation, and promote despatch. But even these withstood not the tooth of time: they were afterwards abolished.

Proceedings, in chancery, allowed, and regulated, against absent defendants, having effects in the hands of residents; with permission to such defendants within seven years after decree against them, to enter an appearance, and contest the right of the complainant.

The district courts, superseded, the court of oyer and terminer; and were to exercise criminal jurisdiction in a similar manner. Prosecutors for the commonwealth were to be appointed by the courts, to officiate where the attorney general, could not attend; and to be paid out of the public treasury, as much as the court would certify, each, deserved, for his services.

Deeds, and other writings, might be acknowledged, before the clerk of a district court, and recorded, in the manner prescribed to the clerk of the court of appeals—provided, that where the deed was for land, *the whole of it must lie in the district.*

The judges, of these courts, were allowed one hundred and fifty pounds each, to be paid as the salaries of the judges of the court of appeals were, annually.

The counties, where the court sat, except Franklin, were to furnish court houses and jails—prison bounds, might be prescribed by the court.

Appeals and writs of error, lay from judgments, and decrees of these courts, as from those of the quarter session courts. And all necessary details, are supposed to have been provided for carrying all the powers of the court into full effect.

At the same session, the act establishing district courts, was amended; and all the criminal jurisdiction, concentrated in the court, to be holden at Frankfort.

An act of this session, affecting the public administration of justice, will for that reason, be recognised here, and an outline presented; although an anomaly in jurisprudence. It is, "An act concerning arbitrations." The preamble suggesting great inconvenience to the citizens, by reason that suiters, are burthened with enormous expenses, and the protraction of the final determination of their suits, which operate almost a denial of justice; for remedy whereof, it is enacted: "That parties having controversies, may prepare a statement of their case, and have it entered in any court of record, with the names of the arbitrators." And hence the parties have, respectively, a

right to such process as they required; which was to be executed by the sheriff, as in other cases. The arbitrators named, were to be notified, and when assembled, were to take an oath of impartiality—and then have power to hear and determine the whole matter before them; upon which they were to make their award, under their hands and seals—and return it to court—and there it was to be entered, as final—unless it was made to appear to the court, that it was procured by corruption, or other undue means—or was evidently partial. An appeal, however lay; if taken within three months.

The same fees, are allowed, as in other cases—except for the record—which the clerk is to make, for two shillings—and if the arbitrators ask it, they are to be paid nine shillings each, per day.

It is believed, that but little use has been made, even to this day, of this extraneous jurisdiction: it has been, however, occasionally resorted to; and the awards, rigidly supported by the courts, both inferior, and superior.

In the next year, 1796—the legislature again innovated on the laws of jurisprudence, under the title of "*An act to reduce into one the several acts establishing county courts, regulating the proceedings therein, those concerning justices of the peace, and their jurisdiction*"; with two others, hereafter to be noticed.

The act, of which the title has been recited, is substantially, a repetition of former acts, as to justices of the peace, and county courts. It declares, a competent number of justices shall be appointed in each county—directs their taking the oath—requires them to hold a monthly court, which is to be called "county court"; and prescribes its jurisdiction. Each county court is enjoined to build, where they are not already built, a good court house, and jail; and to keep them in repair. For the purpose of such buildings, the courts may severally purchase and hold two acres of land—to be paid for out of the county levy; which they were authorized to assess on free white males, and on all slaves, both male and female, over sixteen years of age.

This is a relief, of the Virginia mode, to which there is much adherence throughout the county court, and quarter session, system.

To return to the act—it also regulates appeals from single justices, to the county court—but says nothing of appeals from the court, to any superior tribunal. It is evidently exceedingly defective; but it has the benefit of all former laws—for it repeals none.

The next act to be scanned, according to the order proposed, is one of the same session, entitled, "*An act to reduce into one, the several acts, establishing courts of quarter sessions, and directing the proceedings therein.*"

This act may be said to bear the same relation to the quarter sessions, as the last act did to the county courts. It establishes one in each county, to be constituted of three justices, to be appointed for that purpose; any two of whom to make a court. Their terms are fixed, to four times in the year; and the length of them determined: their rights, powers, and jurisdictions, prescribed as before; and to an equal extent without any that can be called quite new—clerks to docket causes, and apportion them for trial. The members of the court were to receive two dollars a day, while attending court, payable half yearly. In fine, a new court was constituted, in each county.

This act, like the other, had no repealing clause. And like the other, in another respect, it overturned the courts of quarter sessions, previously established, as that did, the county courts; requiring, new appointments, and commissions, to organize them. Thus affording examples of the perfect impotence of judicial systems, when opposed to a legislature, determined to see no obstacles in present institutions, to the unrestrained exercise of its will. That of the day, saw no obvious, and palpable violation of the constitution; and were but little disposed to seek, or admit, inferences, from collateral provisions, however direct, or forcible.

It was in vain to remark, that by the constitution, courts were to be *ordained*, and *established*—that the judges, were

commissioned "during good behaviour"—that they could not be removed by impeachment, without crime; nor on address, but for reasons to be entered on the journal; nor without the concurrence of two-thirds of each branch of the general assembly, in either case.

It was replied, that it belonged to the legislature to establish courts—that they could do it from time, to time—that these courts were filled with "justices," not "judges"—and that it would be a violation of good behaviour, for those whose courts were prostrated, to make any noise about it; or to pretend to claim the office, when it no more existed. If it was remarked that, the late court of oyer and terminer, had not been filled with "justices," but "judges"; and that it had also been abolished. Then, a very short answer would meet the case—"The power, was with the legislature, and there was none to hinder its exercise: they possessed the right of repealing the laws they enacted."

And so it seems to have been, and still is. For if in any instance, the abolished court should make it a judicial question, and the court in the last resort, should consider the law abolishing the inferior court, to be unconstitutional, and void: if there was a majority in the legislature sufficient to pass a law, they might put down the court of appeals, in the same way; leaving it without defence, or support; except the judges should find it, from the people, by address, petition, or remonstrance—or in the last struggle, an election; by which men of different modes of thinking, and acting, should be chosen to form the next majority, of law makers. Such a state of case cannot be contemplated without awful forebodings, that upon the mere constitutional question, the court would be left to sink under legislative preponderance. What other questions of interest, or party, might be mingled in the conflict, to produce a different result, is not to be foreseen; and would be unusefully conjectured.

This discussion, crude as it is, sufficiently shews the real weakness of the judiciary, when it may ever be opposed by a determined majority, in the general assembly. It is a defect

in the constitution; because it leaves the courts, and, even that, in the last resort—constituting, an entire department of the government, in a state of dependence for existence on the legislature: while their independence, free of crime, and as judicial tribunals, is necessary, to individual safety, and the preservation of the social compact. It is believed that the constitution cannot be maintained, while the existence of the courts from the highest, to the lowest, inclusive, may be annihilated, by an act of the legislature.

For, it seems to be admitted, that the abolition of the office, dismisses the officer. To repeal the law establishing the court, is by consequence, to deprive the judge of his office; and that without any regard to his behaviour, good, or bad. In vain, then, did the constitution give the judge a commission “during good behaviour”—in vain, it required the concurrence of “two-thirds” of his triers, to pronounce a sentence of removal, in one mode of proceeding; if the same men, by a “majority,” can effect his expulsion from office, in another mode, of their own instituting.

To give stability to the constitution, and to secure a reasonable independence to the judiciary, the court of appeals should be permanently excluded from legislative abolition. And this would be the fair construction of the constitution. But those who may choose to violate it, are not those who will construe it fairly. The prohibition should, therefore, be positive and explicit.

And now, to descend to other particulars. “An act giving further time to the owners of lands to survey the same, and for returning plats and certificates to the register’s office;” being the first, which it has been supposed, interferes, with the third article of the compact of separation made with Virginia; it will engage, as it is believed to warrant, a measure of discussion here, and again at a more advanced stage of the history.

The article of the compact, to which reference has been made, is in the following terms, viz:

“That all private rights and interests of lands within the said district, derived from the laws of Virginia, prior to such

separation, shall remain valid, and secure, under the laws of the proposed state, and shall be determined by the laws now existing in this state."—Virginia.

The law of Kentucky in question, recites, that—

"It appears, that an act passed by the Virginia assembly in 1785, entitled "An act to repeal an act entitled 'An act concerning entries and surveys on the western waters, and for other purposes;" which had been continued by subsequent acts; would expire before the same could be complied with: therefore,

*"Be it enacted,* That the above recited act be continued from the passage hereof; and the further time of one year, from the first day of January, 1794, be allowed the owners of entries to comply with the requisitions of the same: during which time no such entry shall be forfeited."

There were other provisions in the act of the same character as this; which it is unnecessary to recite, as all are either constitutional and valid, or otherwise.

Let it be next remarked, that the Virginia act, continued as above, provided: "That immediately after the first day of January, 1787, the surveyor of each county should notify the owners of entries for land within their county, or their agents, of the time at which they would respectively proceed to survey the several tracts entered in their books; and to enable the surveyor to give the requisite notice, the owners of entries then existing, unsurveyed, were required to appoint some person within the county where the land lay, as their agent or attorney, before the aforesaid first day of January; and who was further to give to the surveyor notice of such appointment, within one month thereafter—or on failure thereof his entry should become void:" with a saving in the case of infants, and prisoners in captivity. This Virginia act had been continued from time to time, by the legislature of that state; and once after the 18th of December, 1789, the date of the compact: which brought it down to the time alluded to in the act of Kentucky. The effect of all which was, if the two last acts were valid, to give the owners of entries, who had not appointed.

agents, the further time mentioned in the Kentucky act, as aforesaid, to make such appointments, respectively; and thereby to save their lands, otherwise forfeited.

Whether, or not, these acts passed subsequent to the compact of separation, the one by Virginia, the other by Kentucky, are valid, or otherwise, will depend upon the result of the investigation of the question: Do they, or not, infringe and impair the aforesaid third article of the compact? For it is expressly against a clause in the first paragraph of the tenth section of the constitution of the United States, *for any state to pass any law impairing the obligation of contracts.*

The singular situation of claims to land in Kentucky at the time of entering into the compact; the course of legislation since; and a recent decision of the supreme court of the United States, have rendered this a subject of inexpressible interest to the people of this country: who, it is believed, would be pleased to see the whole matter elucidated in some permanent form, in a manner to do justice, and maintain right, upon constitutional principles. Without intending at this place to anticipate a more important view of the subject than this act presents, it may be observed, that the sole difficulty arises out of the interference of adverse claims; some of which had been patented, or surveyed; or at least, agents had been appointed for them on the one side, under laws prior to the compact—while, on the other side, the adversary claim stood unsurveyed, on a good, and prior *entry*; or conflicted with a bad, if an older entry, at that time. In every such case according to the course of decisions, if the mere *entry* was surveyed, or the agent appointed, within the time prescribed by law; and the claims come to be litigated, the better entry, so saved by protracting time, would ultimately hold the land. But if these protracting laws, were null and void, then the entries surveyed in virtue of them, and claiming them for their support, of necessity must fall with them: inasmuch, as, if the foundation be taken away the superstructure will tumble.

To determine whether any law, by which conflicting rights of lands, derived from the laws of Virginia, is applicable,



and valid, or not, it is to be tested by the compact which has in its third article, as already seen, this clause: "and shall be determined by the laws *now* existing in this state"—Virginia. Meaning that the conflicting claims, or rights and interests of lands, derived &c., should not be subject to be affected by any new laws, made on the one side, or the other, but by the laws previously made, and then in force. These were known to both parties, and fair to all.

The question is now reduced to a plain inquiry of fact—a question indeed, almost too bald, and plain to be put; but for form's sake, it will be put—Is the act of Virginia, of 1791, or that of Kentucky, of 1793, coexistent with the *now* of the compact, made in December, 1789? There is no apprehension of error in the monosyllable, No. Then they cannot be laws, embraced in the compact, as laws of determination, at the time it was made. But leave out these last laws—prolonging the time for appointing agents—and determine the contest by the prior laws, and the claims resting on them are good, better, and best, through all the stages of positive, and comparative merit; according to the applicable laws in force at the date of the compact.

Is it said, that the state, in the plenitude of her legislative sovereignty, can pass what law she pleases? It is only to suggest, that she is one of the United States, and refer to the constitution, where it declares, "no state shall pass any law impairing the obligation of contracts." The formality of proving that contract, and compact, are words of the same meaning; or that the laws of Virginia, and Kentucky, passed since the compact, if permitted to operate on it, are, or would be a violation of it, are dispensed with; as being superfluous, to minds capable of reasoning, and useless to all others.

It will, however, be remarked, that notwithstanding none of the acts of Kentucky affecting conflicting titles derived from the laws of Virginia, to lands in this state, could be made rules of decision between litigants; that yet, where there was no intervening claim, the legislature might postpone or remit the forfeiture, by means of the law in question: and that the title

obtained under the law of Kentucky, would be in such case, as effectual against the state, and her subsequent grantees, as if the compact had never been made.

The subsequent acts of the kind,—and they were repeated, or changed into positive permission to survey, and obtain title, until 1798,—demand no further notice, as it is thought, at this time; because they all rest on the same principle, as to their validity.

This subject will, however, be resumed, and treated more at large, in connexion with the occupying claimant laws; when it will be shewn that they, are not laws of title, and have nothing to do with the compact.

An act of some singularity was passed early in the session, calling on the attorney general to attend the present and future sessions, for the purpose of drafting bills, conformable to resolutions of either house. It is believed, that this act had but little effect; and was repealed in the next year.

The act of this session, declaring that all persons holding any legislative, executive, judicial, or lucrative, office whatever under the authority of the United States, should be disqualified for, and incapable of holding, or exercising, any office either, executive, judicial, or lucrative, whatever, under the commonwealth, and ineligible to either house of the legislature; is a strong indication of the general feeling towards the government of the United States.

At the session of 1794, the foregoing act was explained not to extend to affect persons called on to act as officers on voluntary expeditions under the authority of the United States: but, persons receiving commissions in the standing army of the United States, and those who should be called into service for more than four months, were exempted from the benefit of the foregoing amelioration, and left under the full rigour of the original law; which subjected the offender to a fine of two hundred pounds. Again, in 1798, a new act was made, and a fine of ten dollars per month imposed on each offender, against the law; to the use of any one who would sue—And furthermore, grand juries were required to present all such

offenders: who, upon conviction, were subject to pay fifty dollars, to the use of the commonwealth. This was in a time of much excitement: and men were almost persuaded to forget that they were represented in the congress, of the United States; or that their neighbours, appointed under the general government, were their fellow citizens. Of this, further notice will be taken hereafter.

Clark county was made of parts of Fayette and Bourbon: "beginning at the mouth of Boone's creek on the Kentucky river; thence up the same to the mouth of Welch's fork; thence a direct line to Bourbon line such a course as will leave the house of John McCreary, Sen. one quarter of a mile to the westward; thence a straight line to Stoner's fork of Licking, such a course as will leave Bourbon court house eleven miles from the nearest part of said line; thence a straight line to the line of Mason county, so as to leave the Blue licks two miles to the northwest thereof; thence up the main branch of Licking along the line of Mason county to the head thereof, and along the said line a direct course from the head of Licking to strike the nearest part of Cumberland mountain; then along the said mountain southwardly to the present line of Bourbon county to the head of Kentucky; thence down the same to the beginning:" to take effect from and after the 1st day of February, 1793.

At this session of November, 1792, the subject of slavery, was acted on. No person was permitted to buy of, or sell to, a slave any manner of thing whatsoever, without a written permit descriptive of the article; under the penalty of four times the value of the thing bought, or sold. And, although there had been a court of quarter sessions instituted at the preceding session, the jurisdiction of the offence was given to the *county court*, if over five pounds; if under that sum, to the justices, respectively. So far, as to the free person. The slave concerned in the prohibited transaction, was to receive ten lashes, by order of any justice of the peace.

In 1798, an act was passed to reduce into one the several acts concerning slaves, free negroes, mulattoes, and Indians.

This act ordains, that no persons shall be slaves, within the commonwealth, who were not so on the 17th of October, 1795, and the descendants of the females of them.

By this act, no slave to be a witness for, or against free white persons.

No slave, to leave the tenement of his, or her master, or mistress, without written permission; and if he, or she, does, any free person may take such offender before a justice, who may order the infliction of stripes, or not, at his option.

No slave, to appear on the plantation of another, without such permit as aforesaid, under the penalty of ten lashes, to be inflicted on the bare back by the owner, or overseer, of the plantation.

No negro, mulatto, or Indian, to carry any gun, powder, shot, club, or other weapon; and offending herein, the weapon might be seized, the person taken before a justice of the peace, who might order thirty-nine lashes well laid on the bare back, for every such offence. If, however, such persons were free, this act did not apply.

Riots, routs, unlawful assemblies, trespasses, and seditious speeches of slaves, were punishable with stripes, at the discretion of a justice of the peace.

And to prevent disorderly meetings of slaves, masters, and others having the control, were forbid permitting any slave not belonging to the plantation, to remain on it more than four hours at any one time, without the leave of the slave's owner, under the penalty of two dollars; and in the like case for allowing more than five slaves to be together, other than those belonging to the place, the proprietor forfeited five shillings for each: provided, that slaves of the same master, though usually employed on different plantations, might visit, with the formality of written permits.

Free persons, white or coloured, were forbidden to permit, or be present at, any assembly of slaves, or to harbour one; and offending herein, was to pay fifteen shillings down, or to take twenty lashes well laid on the bare back: of all which, any justice of the peace, was the competent tribunal.

All justices, and sheriffs, were charged to prevent and suppress, meetings of slaves.

Penalties for dealing with slaves, were by this act increased.

No negro, mulatto, or Indian, bond or free, shall at any time lift his hand, in opposition to any white person, subject to receive thirty lashes by order of a justice, supported by the oath of the person complaining.

Owners of slaves are forbid, to permit them to trade as free-men; subject to a fine of ten pounds for every offence: to be recovered in *any court of record*; of course, in the *county court*. Nor were slaves to be permitted to hire themselves, subject to the imprisonment of the offending slave, till the next court; and then by order of the court, sold, at the succeeding county court. Twenty-five per cent, on the amount of every such sale was reserved, to be applied to the lessening of the county levy; and five per cent, for the use of the sheriff: the balance to be paid the late owner.

Justices of the court of quarter sessions, being also justices of the peace, were to be justices of the court of oyer and terminer, for trying any slave charged with a capital offence; and they were to empanel a jury of twelve men from the bystanders, for ascertaining the matters of fact. And in case the sentence should be for death, a respite of thirty days was to take place. These were considered, as ameliorations.

The court might take for evidence, the confession of the party—or the oath, of one or more credible witnesses—or such testimony of negroes, mulattoes, or Indians, with pregnant circumstances, as to them should seem convincing. If the offence was within the benefit of clergy, it was to be extended to the convict; who was only to be burnt in the hand.

Caution was enjoined on the court, to impress a due sense of the obligation of telling the truth, on such negroes, mulattoes, or Indians, not being christians, as should be offered as witnesses; none such were to be sworn, but if the court detected any one of them in falsehood, they were immediately to receive thirty-nine lashes, on his, or her, bare back: of which they were to be notified before they gave testimony.

Masters, of slaves, respectively, might appear for their slave on trial, and avoiding objections to form, make any just defence they could. And by a liberal construction of the law, it is believed that the employment of counsel was allowed.

If the slave was convicted, and executed, the owner was to be paid his, or her assessed value; out of the public treasury.

These details regard an unfortunate, and degraded class of the human race; whose condition will ever be a matter of curiosity, or of interest, to the American politician; and whose legal history, in the character of which they have no share, will be attended to, as an important part of the history of the country. It is believed, that, so long as Kentucky shall permit slavery on her territory, she will have no cause for desiring to withhold from her sister states, or the world, a knowledge of the treatment they receive; even in her legal code, whose apparent rigour is much relaxed in the execution.

There is one trait in the law just analyzed, which will obtain a brief review. It makes a discrimination between such negro, mulatto, and Indian, witnesses, as may be, or supposed, "not christians," and those who are; to the evident disadvantage of the former; without regard to their religion—although the description of negro, mulatto, or Indian, may include "freemen," of fine intellect, liberal information, and a rational religion; who, nevertheless, if they be "not christians," may, without indictment by a grand jury, and without a venire, on the *ipse dixit* of the court, be convicted of an infamous crime, and sentenced to an ignominious punishment: the bill of rights, contained in the twelfth article of the constitution, third and fourth paragraphs, notwithstanding. And again, as to trials, in criminal cases, see the tenth and eleventh paragraphs, of the same article.

To shew the incaution, with which that section of the act has been passed, it is not necessary to comment on the expression: "That *all men* have a natural and indefeisible right to worship Almighty God, according to the dictates of their own consciences," &c.—Or on this other: "That the civil rights, privileges or capacities of any citizen, shall in nowise be diminished,

or enlarged, on account of his religion." Should it be remarked, that no black man, mulatto, or Indian, could be a citizen; it will only be replied, that they might be *freemen*—that they, being in the commonwealth, and free, were entitled to bear arms—that it is not said, such shall not be citizens—while it is implied that they might be—At least, it may be supposed, that they were men; and the constitution is, that "*all men*" have a natural right, &c.; and again, "that no person shall for an indictable offence, be proceeded against criminally, by information," &c.

Nelson county was divided, and Hardin county made; to take place from and after the 20th day of February, 1793: "beginning on Green river, opposite the mouth of Little Barren river; thence a straight line such a course as will strike a point on the dividing ridge between Lynn Camp, and Brush creek, a west course from Skegg's station on Brush creek; thence a straight line to the southwest corner of Washington county, on the head of Salt Lick creek; then down the same to the Rolling fork of Salt river; thence down the same, and down Salt river to the Ohio; then down the Ohio to the mouth of Green river; thence up Green river to the beginning."

The navigable waters of the state attracted the attention of this legislature. Hitherto they had been much neglected; and were in many places obstructed in a manner unauthorized by law. The leading object of the act, appears to be to suppress, and prevent, obstructions in rivers, and creeks navigable for boats; and hence to facilitate the passage of both fish, and boats. Persons offending against the act, were given up to be prosecuted, and to pay a fine of two dollars, for every twenty-four hours that each obstruction should be permitted to stand. The recovery to be effected, by motion before any justice of the peace, or court of record, as the case might be, upon thirty days' notice, to the use of the informer—in the words of the law, with a saving of mill-dams "erected according to law."

But this law was not exempt, more than others, from the restless spirit of the government. In 1794, an act passed for

opening the navigation of main Licking. And all mill-dams, and other obstructions, without exception, were ordered to be removed before the first day of the ensuing May; under the penalty of thirty pounds; to be recovered by action of debt, without any saving of existing rights.

In 1797, a third act passed, to reduce all former acts on the subject, into one act. When among a variety of other things, prescribing the mode by which mill-dams might be thrown across water courses, the act required locks or slopes, on navigable streams.

Hitherto, as a part of the Virginia system, lands had not been subject to execution. An act of this session, made them so; by the terms, "lands, tenements, and hereditaments, in possession, reversion, or remainder." Particular directions for the procedure were given: among which, a valuation was to be made; and unless the land would sell for three-fourths of the assessed estimate, for ready money, the defendant might replevy the debt for three months, by giving bond and security to pay it at the expiration of that time.

And although all postponing of debts, by replevy laws, passed since the adoption of the constitution of the United States, are undoubtedly contrary thereto; which would render such laws null on that point, and the replevies, void; where they acted upon funds subject to pay the debts under laws existing at the date of the contract—yet it is thought, that in a case like the one described, where a fund not before subject to the debt, was by the law made so; that the law could place that subjection, on terms; consistently with the constitution; and without impairing the obligation of the contract, although previously made. Because, taking all the circumstances of the case into consideration, and they left the plaintiff, or creditor, in a better condition, under the law, than he was without it: besides, the legislature were under no obligation to pass the law for creditors, before, or after the contract; and if it could subject the whole land, so it could have subjected the half—if to be sold for ready money, then on three months' credit, or on failure of a sale, authorized giving bond and



security, to pay the debt at the time prescribed. For it was only where there was not other property, that land could be taken by execution. And the constitution did not require that the situation of the creditor should be made better: it only forbade its being made worse, by law making.

It appears, however, that the general assembly of the next year, were affected by scruples, of doing injustice, by subjecting the lands of debtors to the payment of debts contracted before the passage of the act of 1792; and inserted a section in the execution law passed that year, to repeal so much of the act "subjecting lands to the payment of debts," as subjected lands to execution on judgments, founded on contracts entered into before the passage of the law. This certainly freed the subject from every difficulty, of a constitutional nature; and left the parties to pre-existing contracts, to stand on the same legal grounds, as to funds, which they occupied at the time of contracting.

Which was, perhaps, carrying the matter to an unnecessary degree of exactitude; as in plain truth, and real honesty, all bona fide debts, should be paid; and if it was sound policy to subject lands to the payment of debts,—in other words, to execution,—there is no good reason perceived, for the discrimination: nor any reason whatever, for not extending it, to prior torts, as well as to prior, contracts.

So much, however, are mankind, and even legislators, the creatures of whim, caprice, or habit, that the same act of 1793, which limits the act of the preceding year to contracts made after its passage, does allow of three months' replevy upon contracts previously made. But, it is really the same spirit which is detected in both instances—it is not the spirit of justice, but that of favouring debtors. This latter act also permitted debtors taken on a ca. sa. to release their persons, by surrendering land, to pay the debt. But an act of the next year, declared that a surrender of land, should not release the body, although the sheriff might proceed to sell the land. This at least, has the appearance of rigour; and supposes abuses of the former law, to justify its infliction. This act of 1792, was also

partially affected by an act of 1796—but in 1797, it was formally amended. By this act commissioners were appointed by the courts of quarter sessions, to value land taken in execution; and in case it would not sell for three-fourths of its estimated value, it might be sold on three months' credit, or replevied. A law of the preceding year, having exempted slaves from execution, where the defendant had land—this act exempted the land, if there were slaves.

Another act, passed in 1799, dispensed altogether with the commissioners, and ordained that land taken in execution, should be sold on three months' credit, for whatever it would bring; or the defendant in the mean time, might replevy the debt, for a like term.

It is worthy of notice, that, notwithstanding these various laws make no scruple of changing the relative situation of debtor, and creditor, in various respects; that yet they were uniform in excluding land from the payment of debts contracted previous to the passage of the act of 1792.

An act of this session, prescribed the mode of proceeding in cases of impeachment; with due regard to the nature, and object of the constitutional provisions, on that subject.

The instituting inspections of tobacco, hemp, and flour, employed a portion of the same session.

This act required the appointment of three inspectors at each warehouse; and adopted the laws of Virginia, in force at the separation, for their guide, and government. It is certainly a department of great importance to the agricultural interests of the country. That the legislature have at all times had a fellow-feeling with their constituents, as to inspections, may be satisfactorily inferred from the fact, that the law was amended every year, but one, during the existence of the first constitution; and for the next seven years ensuing—and how much oftener, it is not thought material to inquire.

• Trades live by consumption; and frangibility in a commodity is as useful a quality to the manufacturer of hardwares, as

defects and imperfections, inadequacy, or ambiguity, in the laws, are to the faculty of law makers, or the expounders of laws. That the subject need not be touched again, it may now be closed with the remark—that owing to legislation, or some other cause, not less deleterious, public inspections are in but low repute; and add little or nothing, to the credit of the article inspected, at home or abroad. Prudent purchasers inspect for themselves. One cause of this result, is, the too great number of inspections; another, the relaxed habits of the country. Others could be named, but need not: a general reform, will alone correct the evil. Of which, the prospect has not yet dawned.

“An act concerning executions, and for the relief of insolvent debtors,” has relation only to civil transactions—is always important, as a part of the remedial system of every government; and, in fact, is not only the consummation of justice, but it is the great digestive organ of the social, and municipal system. Keep this department in a state of healthy activity, and it shall preserve, or free conscience, from more error, and be productive of greater good, than all the religious creeds in the state. It may be repeated, that a well digested, permanent, and regularly enforced, execution law, both civil and criminal, teaches the right code of morals; renders useless all other sumptuary laws; and at the same time, yields to industry its most pleasing incentives, in a manner perfectly unattainable by any other means without it. To neglect, or embarrass, the due operations of this department, is to open the road for disorder into every part of the community. It is, however, only in the civil line, that the act at present contemplated, operates. It, of course, directs the mode of suing out, executing, and returning, the various final process, emanating from the courts, upon judgments, decrees, and orders, usually denominated by the general term, “executions.”

Perhaps, no single branch of the judicial department, notwithstanding the fluctuating state of all, has undergone more

derangements, or greater shocks from the legislature, than this. It would seem as if this was thought the most vital part, and has therefore been the most frequently attacked, as concentrating in a single vessel all the animal fluid of the whole system: whenever that was to be disordered, the doctors went to work on the execution law. A stop law, of two lines, may produce total stagnation in the circulation of justice: and this is not without example.

Not to forestall the intended review of the subject, it will be passed at present, with the remark—that the act of 1792 was amended in 1793, again in 1794, and once more under the first constitution, in 1796; by a general law, on the subject.

Constables, peace officers, familiar under the laws of Virginia, holding, in relation to justices of the peace, a rank similar to that of sheriff, with respect to the courts, were recognised; and their duties and fees regulated, by an act of this session; which has shared the common fate of frequent amendment. Had those so called been real amendments of the laws, although indicating great ignorance, or inattention in their original formation—yet the legal code of Kentucky, should long since have been the most perfect in the universe.

But alterations, are not necessarily improvements. And it frequently happened, that the *amendment* made the law worse, instead of better—perplexed, what it professed to explain—was the mere effect of the change of members from year to year—or it suited some individual member—or it had been promised to some influential man, in the course of an electioneering canvass for a seat in the legislature.

The governor, by and with the advice of the senate, had the appointment of constables under the constitution, until 1799; when by law the appointment was vested in the county courts, respectively; which is believed to have been entirely repugnant to the constitution: although the journal exhibits no evidence of a *veto*, by the governor. In the preceding year an act had passed, to reduce into one the several acts concerning constables.

A new county was formed out of parts of Lincoln and Nelson, to take effect from and after the first day of January, 1793, by the name of Green: "beginning on Green river, opposite the mouth of Little Barren river; thence a straight line such a course as will strike a point on the dividing ridge between Lynn camp, and Brush creek, a west course from Skegg's station on Brush creek; thence a straight line to the southwest corner of Washington county; thence along the same to the line of Lincoln county; thence west with the same to Green river; thence a line south forty-five degrees east to the Carolina boundary; thence with the same to Logan county line; thence with the Logan county line to the Elk lick, on Little Barren river; thence down the said river to the beginning."

"An act to procure an enumeration of the free male inhabitants, above twenty-one years of age," sufficiently indicates its purpose.

Civil list warrants, were by law, made receivable in payment of the public taxes. These warrants were written vouchers, signed by the auditor of public accounts, that the person, to whom given, and within named, was entitled to receive from the treasury of the commonwealth, the sum expressed. When in fact, the revenue not yet collected, had placed no money in the treasury, with which to take them up. They were acknowledgments of debt, without funds for prompt payment—a kind of check, without a deposite; but free from any deception. This act was an evidence of the best intention—a readiness on the part of the legislature, to pay to the extent of its power; and even to anticipate the means, by forestalling the collection, and converting the evidence of the debt, into the *medium* of payment. It seems innocent—and in that and some other instances, no evil is known to have come of its operation. The smallness of the sum issued, and the short time the warrants were out—besides, that when they once got into the hands of the sheriff, or collector of public revenue, they rarely were again put into circulation; may be assigned as satisfactory reasons for their not depreciating: they really

were founded on a metallic capital. And yet, it may well be doubted whether they were allowable, under the constitution of the United States, to be put into circulation, as the effect was, by this law. Previous to the passage of this act, such warrants, were substantially but evidences of debt, and vouchers for the treasurer, that he had paid the contents, when he produced them. But to give them a quality of paying legal demands, was to authorize a tender; and also at the same time, to give them a circulating quality, as bills of credit—both of which are forbidden by the first paragraph of the tenth section of the federal constitution.

This may appear to some, a rigid construction; to whom the act will seem but the common right of a debtor legislature; that is, the right of anticipating the payment of debts—and these will say, the act was constitutional. The mischief to be guarded against by the constitution was incontestably, the consequences, and effects, of state legislatures substituting any thing whatever, in the place of gold and silver coin, as the medium of circulation, among the people, to pay debts.

The remedy, lies, in so construing the constitution, as to restrain the legislature, from such issues of paper, or any thing, in any shape, or form, as will have the effect directly, or indirectly, to produce that substitute. It is not, that exchanges, of thing for thing, shall not be made; or that mutual debts shall not be discounted, or set off, the one against the other, by individuals—but it is to avoid, and prevent, the legislature of a state, from interfering at all, with the currency, or medium of payment, by issuing, setting afloat, or uttering, any thing, not intrinsically valuable; but such, as may have an estimated value, dependent in no degree upon acts of the same legislature. It is believed, that universal experience had proved, legislative bodies to be as apt to abuse power, as individuals—that the union required a uniform currency—and that it was unsafe to leave with the states, any power on the subject. This impression, proceeding from frequent and recent abuses by state legislatures, was strong when the constitution of the United States was made—while many other evidences,

have been added since, to the former record, which go to fortify its truth, and justness of conception.

Any one, of the least reflection, can discern at once, that the form of the paper put out is nothing, be it a warrant or a certificate, a bank bill or a check, if the holder cannot instantly, at his will and pleasure, have the gold or silver coin for it—if it is for the payment of money, by whatever name expressed, it is but a bill of credit, or simple commodity for market; the value of which, cannot, while the union exists, and should not at any time, be dependent on an annual legislature—that wherever it is the case, the most serious mischiefs to commerce, to all the handicrafts, and to agriculture, will ensue. Illustrations abound at this time in the country; some of which will appear hereafter. Besides, the prohibition in the constitution applies only to state legislatures, not to individuals: the one, makes laws; the others, contracts.

In filling up the court of appeals, George Muter, who, as it has appeared, had been the chief justice of the old district court, and the coadjutor of Colonel Marshall, in opposing the violent separation, then offered, to be imposed on the country, was left out of the nomination—in fact, unprovided for, under the new government—and Harry Innis, appointed chief justice.

This gentleman, being in high favour, was about the same time appointed, upon the recommendation of a partisan, to the Kentucky district court, of the United States; by the nomination of the president, &c.

After some suspense, for the result, the United States gave the best salary; and Mr. Innis became the federal judge. This produced a vacancy in the court of appeals. During all this time the ex-judge, Muter, had been on his former terms, in a manner, the inmate of Colonel Marshall; while several individuals of the family, had interested themselves to get him appointed to the vacant seat in the court. Others also interested themselves—nor was he inactive. At length he received the appointment. And from that day forth, as if faithful to some new contract, he dropped all acquaintance with the family, and never afterwards entered Colonel Marshall's door. The tenor of his new lesson could not be mistaken.

The treasurer, was authorized, and required to borrow any sum of money not exceeding two thousand pounds, including what he had already borrowed—for which he might allow six per cent per annum, to be applied towards the paying of the general assembly; and to other lawful purposes. Five per cent was the established legal interest, at the time. Success attended the negotiation for loans.

“An act to legalize and confirm the sales of certain lands, made by George Taylor, as devisee of Edmund Taylor, dec’d.” was passed this session; and which shews the origin of a wide-spreading branch of legislation: unless it is to be classed with certain acts of the first session, affecting private rights of property, without the consent of the parties concerned, though living. Nor was this the only one, of that general character. A branch of legislation which, in its various ramifications, not only engrosses a large proportion of the time of each session; but is of a most pernicious influence in elections, and otherwise, upon the community, in and out of the legislature. Minds trained up in this course of legislation, learn to disrespect the rights of individuals, and become callous to the suggestions of justice—to the injunctions of the constitution—to the claims of private rights—and ripe for every species of legislative domination, and tyranny, for which they can obtain a majority. For illustrations, the sequel can avouch, with ample testimony.

This session, also authorized a lottery, in favour of Salem academy. This species of gambling, has since been a prolific source of legislation.

Salaries were fixed, and allowed annually to certain officers, by an act of this session—to commence on acceptance of the office, and to be paid quarter yearly at the public treasury.

To the governor, 300l.

To the judges of the court of appeals, each 200l.

To the judges of the court of oyer and terminer, 30l.

To the secretary, 100l.

To the treasurer, 100l.

To the auditor, 100l.

To the attorney general, 100l.



Each claim was to be made to the auditor, whose warrant for the money, was indispensable to its receipt.

And now, to close this survey of the legislation of 1792; it will be remarked, that there were thirty-seven acts passed at the first, and fifty nine at the second session—in all ninety-six; many of which being temporary, private, or local, have not been noticed. A similar course will be pursued in relation to the subsequent sessions; at least to the termination of the first constitution.

## CHAP. II.

*Indian hostilities—Movements of General Wayne—Call for Kentucky Militia—Army takes winter quarters—Democratic Societies—Arrival of Genet—French Intrigue—Governor implicated—his correspondence, &c.—Major-General George R. Clark makes proclamation—Army to invade Louisiana—Revolution in France terminates the intrigue in Kentucky—Other incidents, &c.*

[1793.] In January, 1793, the Indians stole horses in Logan county; were pursued, and one of them killed, after he wounded one of the pursuers. The same month, three men were killed by these blood-thirsty savages, at the Bear Wallow, on the road to Cumberland. The 21st of March, the mail carrier through the wilderness, was killed on Laurel river.

Soon after this occurrence, families coming to settle in the country, were attacked near the Hazle Patch, on the same road, by a strong party of Indians; and while the men made defence, some of them were killed—the rest ran away, leaving the women and children to be made prisoners; as they were.

The 1st of April, Morgan's station, on Slate creek, was taken, and burned, by a party of thirty-five Indians. They killed two, and made nineteen of the inhabitants prisoners. A party of the militia was soon collected. They took the trail of the enemy, in hopes to rescue the prisoners; but the Indians discovering their approach, murdered the captives—most of them being women, and children—some of whom they scalped.

In the opposite section of country, another party, about the same time, killed a man on the Beech fork of Salt river; and a few days afterwards, stole thirty horses from Mann's lick.

On the Ohio, near Eighteen-Mile island, a party fired on a boat—and the next day, took a boy from Eastin's mill; whom they conveyed to the Ohio, and there, giving him a tomahawk, knife, and pipe, set him at liberty, unhurt. Such was their caprice, and humour. The same day, a man travelling from the salt works to Steele's ferry, was taken, and carried prisoner to the towns.

A large party of these restless freebooters, on the 5th of the month, fired on six boats descending the Ohio, and killed a horse only.

On Russell's creek, in this month, fifty Indians attacked a new station; but having killed a man in their approach, an alarm was given, and the inhabitants being thus put on their guard, although much inferior in number, made a successful defence. The loss, or injury, not considerable: the assailants keeping their covers, until they could withdraw; which they presently did, on finding themselves' circumvented, in their design to have surprised the place.

After this repulse, two men were killed on the Rolling fork; and another scalped, who did not die.

The same day, a man was killed at Hardin's station; and within two or three days, a boat was taken on the Ohio, between Louisville and the mouth of Salt river, after the people had escaped from it in a canoe.

April the 22d, Gen. Wayne, stationed at Legionville, with the newly raised army of the United States, destined to chastise these red men of the woods, proclaimed that the president had ordered a treaty to be held with the Indians at the Lower Sandusky; and forbade all hostilities against them, pending negotiations for peace.

In August, a man was killed at Big Bone lick, then distant from any settlement. And intermixed with these murders, many horses had been stolen in the different parts of the state, which it would be useless to specify. Kentucky was infested, and the settlements so open, numerous, and dispersed, as to present innumerable subjects for depredation.

Considerable discontent was known to be rankling in the minds of a certain description of American citizens, from the time that President Washington, had issued his proclamation of neutrality, between the French, and English. The spirit of party was becoming factious; and as an evidence of it, the Democratic Society was instituted in Lexington, upon the Philadelphia model, in this month—hereafter to be further noticed.

The commissioners, appointed by the president, to treat with the Indians, announced, that they refused to make peace. Which by no means disappointed the general expectation.— They had been successful against several regular armies, as they were called; and they saw another preparing, which they expected to defeat, if they should not make peace; but which in the event of peace, would escape them. They were not sufficiently well informed, to appreciate the motives of the president, in offering peace, before he sent a real army into their country. It was the result of humanity in him; a sentiment unknown to them, and which they mistook for fear. What had he to gain from the conquest of poor, ignorant, and naked savages? Nothing but peace. And that he preferred, unstained with any more blood. They, however, frustrated his benevolent intentions from taking effect—the rest was left with Gen. Wayne. Who, in the mean time, had not been inactive. The army under his command, had been moved, in the course of the summer, to fort Washington—where it lay but a short time previous to its receiving his orders early in October, for marching to the Miami of the Lake. At a proper time for receiving the co-operation of the Kentucky militia, the general had, in virtue of an act of congress and the powers vested in him by the president of the United States, made a requisition on the state for mounted volunteers. Such, however, were the prejudices of the militia, and so different were the reception, and dissemination of the call by the governor, from what they should have been, that considerable tardiness was observable in complying with the requisition. The 20th of September, a letter was addressed by General Wayne, from head quarters, Hobson's choice, to General Charles Scott, commandant of the militia, at Georgetown; in which the reluctance of the volunteers, was noticed, and regretted, in a particular manner. And their general, urged with earnestness, to advance with those he had collected, and could collect, by the 1st of October. The 28th of the month of September, the governor of the commonwealth, ordered a draft from the militia, to supply the deficiency of volunteers; who were to be placed on the same foot-

ing, if they equipped themselves; and joined the line of the army at fort Jefferson, by the 15th of October.

On the 13th of the month, the main army on its route to the Miami of Lake Erie, encamped six miles in advance of fort Jefferson; a distance of eighty miles from the Ohio. Here the necessary fortifications for security were made, and the troops rested for several days.

Omitting to notice sundry military incidents, as not belonging to this history; it will be remarked, that on the 24th of the month, General Scott was encamped at a prairie, two miles in advance of the same fort, and four from head quarters; with one thousand mounted volunteers, from Kentucky.

It was there understood, that the Indians, who had been attentive to the movements of the army, were in great force, in the vicinity of the Miami villages; and that a battle was expected, as the certain consequence of marching the army upon them. General Wayne, allowing himself to profit by observation, and experience—considering the season far advanced, the weather already cold, and the army not prepared for a winter campaign in that rigorous climate, determined, to suspend his march, and build fort Greenville. This being done, the regular troops had winter quarters—and the Kentucky volunteers, discharged from further service, most willingly returned home. Had they shewn more alacrity in collecting, and marching out, it is probable the expedition would have terminated the war.

In the course of the winter, some chiefs, under pretence of seeking, rather than suing for peace, came to head quarters; and after looking about, satisfying their curiosity, and holding some idle talks, upon which there was no restraint; suddenly disappeared, without making any proposals, or using even the ceremony of a valedictory: and hence were no more seen, or heard from. They remained without doubt in the same mind, as when they refused the treaty, in the summer: still considering the troops, and baggage, as devoted to death, and pillage.

The general, however, making a very different speculation of it, rested himself in winter quarters.

While the government of the United States, hardly yet established, was making every reasonable, every practicable exertion to extend its protection to each vulnerable point; and to procure the acknowledgment of the rights of the United States, from its neighbouring governments, the more effectually to realize the beneficial results which its friends expected; it was most shamefully traduced, abused, and opposed by its enemies within its bosom; who sheltered themselves under its indulgent protection, to prey upon its very vitals. These, content at one time to take the name of anti-federalists, had recently caught at, and adopted the appellation of democrats; then lately the triumphant party, in France, under a state of revolutionary convulsion: this new denomination quite superseded that of anti-federalists; as being more consonant to the popular purposes they had in view. To the intelligent part of this confraternity of citizens, which pervaded the whole United States; and were both numerous, and powerful, for talents, learning and riches; not only the name, but the influence of the Jacobine club, in Paris, were well known. It was distinctly understood that this principal institution, with its affiliations, throughout the country, had been employed with full success for revolutionary purposes. Its imitation, or rather repetition, was recommended in the United States, under the popular denomination of Democratic Society. The immediate object of which was to revolutionize the administration of the United States government, through the medium of the popular elections. The next object, was to aid France, in her revolutionary struggles against the rest of Europe, and England in particular.

As early as the month of March, in the year 1793, one of these societies was established in Philadelphia: the seat of the federal government—and also the head quarters, of the anti-federal, Jacobine, or democratic party in the United States, and the focus of communication, with France. This Philadelphia society, proclaimed itself with much ostentation, in the capital of two governments, *the patrons and protectors of the people's rights and liberties*; which they plainly suggested were in danger, from their own organized government.

To guard against the surmised danger, affiliating societies, were proposed to be established, throughout the state—who were to correspond, with the primary society in Philadelphia.

It required but little time and attention, to develop the real designs of that audacious innovation, upon the regularly instituted government, of the country. In the first place, the enemies of the federal government, were to be formed into debating and resolving societies—coextensive with their existence in the United States—which was from one extremity, to the other. And thus organized, and communicating with each other, by means of corresponding committees, and the newspapers; they were to form a secret government, directed by the *master hand* in Philadelphia; perfectly irresponsible, but of the most potent kind; by means of prepossessing, forming, occupying, and directing, public opinion.

By these arts, the party were to acquire, and retain a concert of measures—ascertain the strength of their force, its collection, or dispersion; and how to effect the chief end proposed—which was, either to obtain the administration, or to produce the dissolution, of the general government. The possession of it, was the primary object of the leaders. Because in that event, they could appropriate its resources to the service of themselves, and their friends; both in and out of the United States. But to ensure its destruction, rather than it should be administered by President Washington, his expected successor, and the other federalists who might succeed them.

For from the time, the question of uniting with France, was made; but decisively, from the time that the proclamation of neutrality was published in April of this year; it was seen, that the government, did not mean to join France in the war; and that the American democrats, would not have the unrestrained freedom and pleasure, at which they aspired, of fraternizing with their brethren of the Gallic race; and of blending their fortunes, without restraint, as they wished. And this they were determined to counteract at all hazards.

The scheme took effect to a very great extent in Pennsylvania; and was making its progress, in the other states, by its preparatory influence on private opinion; when, in April of the

same year, Citizen Genet, arrived in the United States, in the character of minister of the French republic. This gave a new impulse to former machinations. He effected his landing at Charleston, South Carolina; where he received, and returned the most cordial embraces, of this distinguished fraternity of American citizens—and encouraged by their countenance, and assurance, he actually entered upon the execution of his hostile projects, before he had presented himself to the president of the United States, or been, in any manner recognised by him.

Encouraged by the democrats, as they boastingly called themselves, who were clamorous in favour of France, and for war with England, conversant with revolutions, and aware that however the most imperious obligations of duty, urged the president to pursue the course of peace, and neutrality, which he had adopted; that yet, the government was subject to the popular opinion; whose bias was concurrent with his views—he boldly aspired to its control: in which he saw his own perfect indemnity.

Therefore, even at Charleston, he commenced his career of usurpation and aggression, on the sovereignty, and independence, of the United States. It was there, he gave the first commissions; and armed the first vessels, to cruise against nations with whom the United States were at peace: while in all these outrages, he was supported by the professed democrats of the country, in opposition to government.

After this commencement, he proceeded to Philadelphia, through the interior of the country, the more conveniently to exchange civilities with his friends, and to be assured of their numbers, and dispositions; instead of withholding himself from them, at least, until he had been recognised by the president: for which a voyage coastwise, would have conducted him to the proper place.

On his arrival in the city of Philadelphia, upon being informed that his conduct had attracted the attention, and elicited the disapprobation, of the president; he felt himself called on, either to apologise, or justify. At first, not then perfectly advised of the aid he was to receive at the place, he equiv-



cated. But this was not long the case—he there found the Democratic Society, organized—and there were those, who managed the plot, behind the scenes; from whom he took the sign, and presently interchanged communications of future purposes, under the assurance of mutual pledges. Alexander J. Dallas, secretary of the commonwealth of Pennsylvania, was early distinguished as one of the minister's confidential friends. Many others, of much influence, also known to be hostile to the federal administration, became his bosom companions.

Encouraged, and supported by these leaders, Mr. Genet, changed his language; and openly avowing, publicly defended his measures: which he scrupled not, to repeat.

Mr. Jefferson, at that time secretary of state, of the United States, was of course, placed officially, in a situation of direct intercourse, with this infuriated foreigner: who, afterwards, had the *impudence* to accuse him of holding two languages towards him, "the one public and official, the other private and confidential." A few quotations taken from the letters of the secretary, to Mr. Gouverneur Morris, American minister in Paris, will vouch for what has been said, as to Mr. Genet; proofs of other matters, will appear in proper time; so far as shall be thought pertinent to this history.

Which connects itself with the preceding narrative only, by means of the disgusting and disgraceful part which Kentucky, by her executive, was induced to act, in the same Frenchified drama.

"On the declaration of war, (says the despatch) between France, and England; the United States, being at peace with both, their situation was so new and unexpected by themselves, that their citizens were not in the first instance sensible of the new duties resulting therefrom, and of the restraints it would impose even on their dispositions towards the belligerent powers. Some of them imagined (and chiefly their transient seafaring citizens) that they were free to indulge those dispositions, to take side with either party, and enrich themselves by depredations on the commerce of the other, and were meditating enterprises of this nature, as there was reason to believe.

In this state of the public mind, and before it should take an erroneous direction, difficult to be set right, and dangerous to themselves, and their country, the president thought it expedient, through the channel of a proclamation, to remind our fellow citizens, that we were in a state of peace with all the belligerent powers; that in that state, it was our duty neither to aid nor injure any; to exhort and warn them against acts which might contravene this duty, and particularly those of positive hostility; for the punishment of which the laws would be appealed to; and to put them on their guard also as to the risks they would run, if they should attempt to carry articles of contraband to any. This proclamation ordered on the 19th, and signed the 22d, of April, was sent to you in my letter of the 20th of the same month"—1793.

"On the day of its publication, we received through the channel of the newspapers, the first intimation that Mr. Genet had arrived on the 3th of the month at Charleston, in character of minister plenipotentiary, from his nation to the United States; and that soon after he had sent on to Philadelphia the vessel in which he came, and would himself perform the journey by land. His landing at one of the most distant parts of the United States from his points both of departure and destination, was calculated to excite attention; and very soon afterwards, we learn that he was undertaking to authorize the fitting and arming vessels in the port, enlisting men, foreigners and citizens, and giving them commissions to cruise and commit hostilities, on nations at peace with us; that these vessels were taking and bringing prizes into our ports; that the consuls of France were assuming to hold courts of admiralty on them, to try, condemn, and authorize their sale, as legal prize; and all this before Mr. Genet had presented himself, or his credentials to the president, before he was received by him, without his consent, or consultation, and directly in contravention of the state of peace, existing, and declared to exist in the president's proclamation, and incumbent on him to preserve until the constitutional authority should otherwise declare."

Further—"Mr. Genet asserts his right of arming within our ports, and of enlisting our citizens, and that we have no right to restrain him, or punish them. Examining this question under the law of nations, founded on the general sense and usage of mankind, we have produced proofs from the most enlightened and approved writers on the subject, that a neutral nation must, in all things relating to the war, observe an exact impartiality towards the parties—that favours to one, to the prejudice of the other, would import a fraudulent neutrality, of which no nation would be the dupe; that no succour should be given to either, unless stipulated by treaty, in men, arms, or any thing else, directly serving for war; that the right of raising troops, being one of the rights of sovereignty, and consequently appertaining exclusively to the nation itself, no foreign power or person can levy men within its territory, without its consent; and he who does may be rightfully and severely punished: that if the United States have a right to refuse permission to arm vessels and raise men within their ports and territories, they are bound by the laws of neutrality to exercise that right, and to prohibit, such armament and enlistment."

Again—"Mr. Genet, however, assumes a new and bolder line of conduct. After deciding for himself ultimately, and without respect to the authority of the country, he proceeds to do, what even his sovereign could not authorize; to put himself within the country on a line with its government, act as co-sovereign of the country, arms vessels, levies men, gives out commissions of war, independent of them, and in direct opposition to their orders and efforts. When the government forbids their citizens to arm and engage in the war, he undertakes to arm and engage them. When they forbid vessels to be fitted in their ports for cruising on nations with whom they are at peace, he commissions them to fit, and cruise. When they forbid an uncaded jurisdiction to be exercised within their territory by foreign agents, he undertakes to uphold that exercise, and to avow it openly."

Lastly—"Mr. Genet, not content with using our force, whether we will, or not, in the military line, against nations with whom we are at peace, undertakes to direct the civil government; and particularly for the executive, and legislative bodies, to pronounce what may or may not be exercised by the one, or the other. Thus in his letter of June the 8th, he promises to respect the political opinions of the president, *till the representatives shall have confirmed, or rejected them*—as if the president had undertaken to decide, what had belonged to the decision of congress. In his letter of June 14th, he says, more openly, that the president ought not to have taken on himself to decide on the subject of the letter, but that it was of importance enough to have consulted congress thereon: and in that of June 22d, he tells the president, in direct terms, that congress ought already to have been occupied on certain questions which he had been too hasty in deciding. Thus making himself, and not the president, the judge of the powers ascribed by the constitution to the executive, and dictating to him the occasion when he should exercise the power of convening congress, at an earlier day than their own act prescribed."

Let this suffice for the portrait of Mr. Genet.

In the mean time, there were inflammatory publications from the Philadelphia Democratic society; and other societies of the same kind, instituted in different parts of the state of Pennsylvania: and an increased opposition to the revenue laws of the United States. Kentucky was not insensible to the impulse.

In August, as already mentioned, of this year, one of these societies was established in Lexington: whose prototype, was that of Philadelphia; and whose movements, were of the same character. The old subjects, of Indian war, and the navigation of the Mississippi, were made to take the front of complaint; while the excise brought up the rear. The two former had served the turn of a Spanish, the addition of the latter was now auxiliary to a French, intrigue. These constituted the tub to be thrown out to the whale: while the real design, was carefully concealed from all but the initiated. And the great body

asures which might be necessary to prevent such enterprise." The same officer, was also admonished "that the special interests of Kentucky would be committed by such an attempt; as nothing could be more inauspicious to them, than such a movement, at the very moment, when those interests were under negotiation, between Spain, and the United States."

In a letter of reply dated the 5th of October, 1793, the governor, acknowledged the receipt of the communication, and gave assurance that he should be particularly attentive to prevent any attempts of the nature of that described, from this state—"that, at that time he was sure none such was contemplated in Kentucky: and that her citizens were possessed of too just a sense of the obligations, they owed the general government to embark in any enterprise that would be so injurious to the United States."

Nothing could have been more satisfactory to the president, than was this answer. Candid himself, he could not suspect the want of candour in the governor; then, so correct in his sentiments—so sensible to his duty—so clear in his assurances of performance—so confident of the attention of the people to the peace, and interests of the United States. The president, gratified with the governor's reply, reposed on it with the most entire confidence. The tenor of the whole, accorded with his own pure views, and the sternest integrity. The writer's sincerity could not be doubted—his defection, was not suspected. As yet, it would seem, that he had not been tempted. He had not then fraternized with the Democratic society—nor exchanged embraces, with the agents of the French minister. Soon, however, he was tempted—and as soon, he fell.

A few extracts from a cotemporaneous publication, in the Kentucky Gazette, which will be found in unison with the resolution of the Democratic society already given, will illustrate the temper and views of the leaders of that society, which was observed to assume considerable activity.

The piece, was addressed, "To the Citizens of the West." And after the positive assertion of an undoubted right to the use of the Mississippi—it proceeds to state: "That they had

too long placed an implicit dependence on the impartiality, and virtue of the general government. Patient under the ungenerous local policy by which that government had been uniformly actuated—patient under the delays which it has feigned, and the obstacles which it has opposed to the procurement of your right—patient under the forever to be detested attempt to barter away that right—you have hitherto submitted to the oppressive exactions of the jealous Spaniards; and have not even raised your faltering voices, to say, to the arbiters of your fate, You have done amiss! Awake, from your lethargy—think, and act for yourselves. Let the example of FRANCE, and her glorious success, animate you in the pursuit of those advantages, which nature has bestowed upon your country.” With much more of the same kind of inflated gas—prepared to give out heat, rather than light.

This address evidently intended to promote the objects of the Democratic society, whatever they might be—the establishment of other societies, and other publications of a similar kind, ever calculated to attract the attention of the reflecting, as well as of the merely feeling, part of the community; but such as were not initiated, were left without a clue by which to guide, even conjecture, to a definite object. The governor, omitted to warn the people, as he had been requested. Mr. Brown, the only member in congress, from this state, as it is believed, who was in the secret, did not deem it expedient, to make any publication, of a nature to put the well disposed citizen, on his guard. That he was apprised of Genet’s project, even at its birth; has been long since disclosed by him, in the course of legal evidence—in which he also disclosed that shortly afterwards he heard it from one of the heads of department; and that as to himself, he did not return to Kentucky in that year, nor till August, 1795.

A Democratic society at Georgetown, and another at Paris; are to be considered as offsprings of that in Lexington; inheriting its principles, and embracing its projects. They condemned, and abused, the president’s proclamation of neutrality; his decisions in relation to Genet—the excise—the army—and

whatever had the name of federal. They proclaimed themselves the friends of the people; and offered to become the guardians of their rights, and liberties; which they represented, as being in danger, from those to whom they had committed the administration of the general government. Thus arrogantly overlooking, even the state governments, and all the regularly constituted means of public, and private safety; they openly aimed to alienate the people from them; and especially the general government, which held the destinies of the nation; by means of resolutions, and newspaper publications—intended to operate on, influence, and control, popular opinion.

Whenever the people are induced to act, by other than constitutional organs, sinister designs may well be suspected—while the tendency is to anarchy; often to revolution—Or they may terminate in a simple change of party; or explode in abortion.

And were not such things, under one form, or another, frequent in democratic governments, the success on the one side, and the delusion on the other, would be matters of astonishment.

On the 6th of November, in the same year, a second letter from the secretary of state of the United States, was despatched to inform the governor of Kentucky, "that the representatives of Spain had given information that four Frenchmen of the name of Lachaise, Depeau, Mathurin, and Gregnon, had left Philadelphia, on the 2d of the month, for Kentucky. With this information, was sent a description of their persons; and the further intelligence, that they were authorized by the minister of France, to excite, and engage as many as they could, citizens, and others, in Kentucky, and elsewhere, to undertake an expedition against the Spanish settlements; and eventually to descend the river, and attack New Orleans. That they were furnished with money, and blank commissions, for the purpose—to be filled at discretion." And the attention of the governor, was again invited to the subject: and particularly to these Frenchmen—once more he was requested, not to permit them to excite, within Kentucky, or carry on from there any hostilities into the territories of Spain. Legal prose-

cutions, were recommended—but should those fail, or prove inadequate; suppression by the militia of the state, was suggested, and urged. Reference was made to the example of other states—and much solicitude expressed, that the people of Kentucky should not be decoyed into any illegal participation of these measures, by any effect they might expect from them, on the navigation of the Mississippi. And they were again admonished, that their surest dependence was on the general government, and the measures they were pursuing, for the attainment of that object.

Had this letter, or the substance of it, been published; no doubt should be entertained, notwithstanding Kentucky was anti-federal, but that the good sense, and real patriotism of the country, would have turned an awful frown on so insulting, and clandestine an *intrigue*, as that, instituted by Mr. Genet.

This was not desired; on the contrary it was to be avoided: and the governor having united himself to the party, no such publication was made, to the people as had been requested.

Under date, of the same day, as the last letter of the secretary of state, there was another addressed to the governor, from the secretary of the war office—of which, the following is an extract. “To permit such a measure, (as that projected by the minister of France) in any of the United States, would be a breach of our neutrality, and of course involve the United States in the existing war—and therefore, the enterprise ought not to be tolerated in the least degree.” Again—“The secretary of state has suggested how this design may be prevented by the usual course of the laws—but if this mode should be ineffectual, I am authorized by the president of the United States, to request that your excellency will use effectual military force to prevent the execution of the plan of the said Frenchmen, or any other persons who may support, or abet their design. For the lawful expenses of which the United States will be responsible.”

So much had this French enterprise rendered the governor of Kentucky an object of attention, that the governor of the Northwestern Territory, addressed a letter to him on the 7th



of the same November. The following extracts are from it:

"I have received pretty direct information which I think necessary to communicate to you—that General Clark has received a commission, from the government of France, and is about to raise a body of men in Kentucky to attack the Spanish settlements upon the Mississippi. Should a business of this kind be prosecuted, the nation, Sir, would probably be involved in very serious difficulties, as well as the country over which you preside.

"It would appear that some measures to counteract it, should be taken immediately; more especially, if it be true, what report says, that a large sum of money, a paymaster, and a number of French officers, are arrived at the falls of Ohio; and a number of boats for the expedition laid down. There can be no doubt, a matter of this kind, would not escape your vigilance. But as I got the account of it in a manner that would not probably reach you, I thought it my duty to give you, it over, which must be my excuse for troubling you at this time."

Early in November, the legislature of the state assembled—when the governor made his communications to both houses; but without alluding to the French enterprise, or the information, given him by the secretary touching the negotiations with Spain. The session continued for weeks; the same reserve was maintained; notwithstanding, the governor received, these last letters in the time. Neither did he issue any proclamation, to admonish the people.

His vigilance so torpid—a dereliction of duty so palpable, is not to be explained, by the mere circumstance, of the secretary of the commonwealth being brother to the member of congress, or a member of the Democratic society of Lexington—No: the effect, originated in a cause more profound; of which those facts, were but evidences of its existence—and is only to be accounted for, by a recurrence to the extraordinary contingencies of the times; their concurrence seems to have brought into action every principle hostile to the government of the United States; of which the governor of Kentucky,

appears to have participated his full share—and in some of them with a very vulgar feeling. He was—of that description of citizens, who were opposed to the adoption of the constitution of the United States—yet in a manner reconciled by its progress—but his enmity to Great Britain ever strong and unabated—his attachment to France, always warm, had been recently reanimated, and rendered even zealous. He was a distiller of whiskey, and so opposed to the tax on it, that he discouraged its collection. He hated the Spaniards; as they held the Mississippi, and occluded Kentucky from its navigation. Some of his personal, and influential friends, were members of the democratic societies: between which, and the French agents, there was a correspondence, or interchange of sentiments. While two of these agents, were prepared by the 25th of the month, to open a direct intercourse by letter with the governor himself, on the subject of their mission, of usurpation, insult, and aggression, on the peace, and sovereignty of the federal government, charged, with the power, and duty, of neutrality, or war. That no doubt shall remain of the fact, of the correspondence alluded to, at once astonishing, and mortifying, the letters as far as seen are rendered literally; the place of date, a few miles from the governor's farm. They follow:

“KNOB LICK, *November 25th, 1793.*

“CITIZEN GOVERNOR:

“Despatched by the ambassador of the French republic, to co-operate with Citizen Michaux, in the objects of his mission as agent of the republic, (of which I presume you have already been informed,) I now take the liberty of expressing my regret that it is out of my power to wait upon you *to deliver the letters which I was intrusted with by the minister*; and to assure you of the lively affection which I feel for the inhabitants of that country, whose interests are so dear to you.

“I have heard that you sometimes detach yourself from public business for the purpose of visiting your family; should you have such a journey in contemplation, I will thank you to inform me of it.

"Impressed with a conviction that you feel yourself deeply interested in the success of our arms, I transmit you an account of our late brilliant achievements. I also add a copy of our excellent constitution, which has been generally accepted; and which has reconciled all parties.

"AUGUSTUS LACHAISE."

No answer to this letter has been seen. That one was returned, is rendered probable from various considerations; but especially, from there being one, to another letter, of the same date, place, and character.

That the French minister, had addressed the governor by letter, is evidenced, by his agent Lachaise; and implies that his dispositions had been made known to Mr. Genet, by some common friend, Mr. Brown for example, in Philadelphia; or no such liberty could have been taken. The other letter, follows:

"CITIZEN GOVERNOR:

"It may appear quite strange to write to you on a subject in which although it is of some consequence.

"With confidence from the French ambassador, I have been despatched in company with more Frenchmen to join the expedition of the Mississippi.

"As I am to procure the provision, I am happy to communicate to you, whatever you shall think worthy of my notice, or in which your advice may be of use to me, as I hope I have in no way disoblige you; if I have, I will most willingly ask your pardon. For nobody can be more than I am willing for your prosperity and happiness.

"As some strange reports has reached my ears that your excellence has positive orders to arrest all citizens inclining to our assistance, and as my remembrance know by your conduct, in justice you will satisfy me in this uncommon request.

"Please let me know, as I shall not make my supply till your excellence please to honour me with a small answer.

"I am your wellwisher in remaining for the French cause, a true citizen democrat.

"CHARLE DEPEAU."

*“Postscript.*—Please to participate some of these handbills, to that noble society of democrats; I also enclose a paper from Pittsburgh.”

To the preceding letter, the governor replied, as follows:

“FRANKFORT, *November 28th*, 1793.

“SIR: I have just received your favour of the 25th instant, in which you inform me of your being despatched with other French agents to go on the expedition of the Mississippi, and that reports had reached you that I have positive orders to arrest all citizens that engage in that enterprise. I will just state to you what I have in charge from the secretary of state at Philadelphia on that subject, viz:

“The Spanish ministers residing at this place have complained to the president of the United States that certain persons there are taking measures to excite the inhabitants of Kentucky to join in an enterprise against the Spanish dominions on the Mississippi, and directing me to be particularly attentive to any attempts of this kind among the citizens of Kentucky; and that if I should have reason to believe any such enterprise meditated, that I should put them on their guard against the consequences, as all acts of hostility committed by them on nations at peace with the United States, are forbidden by the laws, and will expose them to punishment; and that in every event I should take those legal measures necessary to prevent any such enterprise.’

“To which charge I must pay that attention which my present situation obliges me.

“I am, Sir, with respect,

“Your most obedient servant,

“ISAAC SHELBY.”

The conduct of Governor St. Clair, and General Wayne, which will be presently shewn in relation to this French enterprise, will it is believed be a sufficient commentary on the course pursued by Governor Shelby.

Governor St. Clair, besides the letter addressed to the governor of Kentucky, already seen, published a proclamation in his territory, informing the citizens of the contemplated in-

vasion of the Spanish province on the Mississippi, and warning them of the dangerous consequences of participating in it. The conduct of Governor Shelby being under observation, was duly remarked; and towards the end of the year, when all doubt was removed—and his feelings, and sentiments, sufficiently penetrated, ascertained, and weighed—General Wayne was put upon the alert.

On the 6th of January, 1794, he addressed a letter with enclosures, to the governor of Kentucky. They follow:

"SIR: I have the honour to enclose your excellency a copy of a letter to the commanding officer of the cavalry stationed between Georgetown and Lexington, in your state, directing him to receive, and obey your excellency's orders should you find any occasion for their services in suppressing the design mentioned in the enclosed extracts of letters, from Governor St. Clair, and the secretary of war. The original letter from the war office, you have undoubtedly received before this period.

"Should the force now offered be deemed insufficient, or should more be wanted, it shall not be withheld, upon this interesting occasion; notwithstanding our proximity to the combined force of the hostile Indians; who are now held in double check, by the troops on this ground, and those posted on the field of battle of the 4th of November, 1791.

"The measures which I have taken for the protection of the northwestern frontier, I hope and trust will be found satisfactory, and effectual.

(Signed)

"ANTHONY WAYNE."

Extract of a letter from Governor St. Clair to Gen. Wayne:

"MARIETTA, *December 9th*, 1793.

"On the 2d instant, I met with a letter from the secretary of war, announcing the design of certain Frenchmen, to engage in some military expedition against the possessions of Spain on the Mississippi—to set out from Kentucky. Of this, I had received information before I left fort Washington, and informed Governor Shelby of it; in order, that he might take such measures to prevent it, as he judged proper."

Another extract, from General Wayne to Major W. Winston, or the officer commanding the squadron of horse:

"SIR: It has been suggested that there is a design of certain Frenchmen to engage in some military enterprise against the possessions of Spain on the Mississippi—to set out from Kentucky—which government are desirous of suppressing, by due course of law; but should that mode be found ineffectual, his excellency the governor of the state of Kentucky, will probably call on you and the dragoons under your command to assist in the suppression: you are in that case to receive, and obey his orders, with promptitude.

"In the interim you are to hold yourself in perfect readiness to advance to any quarter, at a moment's warning."

Rumours of these measures undoubtedly reached the ears of the emissaries, and friends of France—which, with the caution given them by Governor Shelby, induced great privacy, and circumspection on their part, in executing preparations for the enterprise. It, however, proceeded—commissions, bearing the name of the French minister, Genet, and importing the authority of the French republic, were distributed, and received by citizens of Kentucky, sufficient to command an army of two thousand men.

George Rogers Clark, once an officer of distinguished services, and merit, had been induced to accept the command of this clandestine force: and in a written document, set forth its authority, principles, and objects; with the compensations, and emoluments to be expected.

The following is a copy:

"GEORGE R. CLARK, ESQ.

"Major General in the armies of France, and commander in chief of the French Revolutionary Legions on the Mississippi.

"*Proposals*—For raising volunteers for the reduction of the Spanish posts on the Mississippi, for opening the trade of that river, and giving freedom to its inhabitants, &c.

"All persons serving the expedition, to be entitled to one thousand acres of land—those that engage for one year, will be entitled to two thousand acres of land—if they serve two

years, or during the present war with France, they will have three thousand acres of any unappropriated land that may be conquered—the officers in proportion—pay, &c. as other French troops. All lawful plunder to be equally divided, according to the custom of war.

“All necessaries will be provided for the enterprise, and every precaution taken to cause the return of those who wish to quit the service, as comfortably as possible; and a reasonable number of days allowed them to return—at the expiration of which time their pay will cease. All persons will be commissioned agreeably to the number of men they bring into the field—those who serve the expedition, will have their choice of receiving their lands, or one dollar per day.”

Thus were the Kentuckians, invited to become, invaders, freebooters, and lawless marauders on their peaceful neighbours—under a foreign standard—at which, their governor, looked, and smiled—while Judge Innis, an organ of the government, thus insulted, and outraged, was privy—and connived!!!

That Governor Shelby had seen the manifesto of General Clark, when he next wrote to the secretary of state, of the United States, is not affirmed; because no direct evidence of the fact is possessed; he had certainly heard of his commission, by the information of Governor St. Clair. That General Clark, had seen the answer of Shelby to Depeau, should admit of no doubt—that he considered it, a certificate of *connivance*, is no less probable. How long it was between the receipt of the commission, and the proposals, emanating from it, cannot be stated—yet, from the nature of the case, which seemed to require despatch, it cannot be supposed, there was the lapse of many days.

But Governor Shelby, has spoken for himself; it is right to hear him. The 13th of January, 1794, he addressed the secretary in the following letter:

“SIR: After the date of my last letter to you, I received information that a commission had been sent to General Clark, with power to name, and commission, other officers, and to raise a body of men: no steps having been taken by him (as

far as has come to my knowledge) to carry this plan into execution I did not conceive, that it was either proper or necessary, for me to do any thing in the business.

"Two Frenchmen, Lachaise, and Depeau, have lately come into this state. I am told they declare publicly, they are in daily expectation of receiving a supply of money, and that as soon as they do receive it, they shall raise a body of men, and proceed with them down the river.

"Whether they have any sufficient reason to expect to get such a supply, or any serious intention of applying it in that way, if they do receive it, I can form no opinion.

"I judge it proper, as the president had directed you to write to me on this subject, to give you this information, that he may be apprised as fully as I am of the steps which have been, and are now taking here, in this matter. If the president should hereafter think it necessary to hold any further communication with the executive of this state on this subject, I wish him to be full, and explicit as to the part which he wishes and expects me to act. That if what is required of me should in my opinion be within my constitutional powers, and in the line of my duty, I may hereafter have it in my power to shew that the steps which I may take were not only within my legal powers, but were also required by him.

"I have great doubts, even if they (General Clark, and the Frenchmen) attempt to carry this plan into execution, (provided they manage their business with prudence) whether there is any legal authority to restrain or to punish them; at least before they have actually accomplished it. For if it is lawful for any one citizen of this state to leave it, it is equally so for any number of them to do it. It is also lawful for them to carry with them any quantity of provisions, arms, and ammunition. And if the act is lawful in itself, there is nothing but the particular intention with which it is done, that can possibly make it unlawful—but I know of no law which inflicts a punishment on intention only—or any criterion by which to decide



what would be sufficient evidence of that intention: (even) if it was a proper subject of legal censure.

"I shall upon all occasions be averse to the exercise of any power which I do not consider myself as being clearly and explicitly invested with; much less would I assume power, to exercise it against men, who I consider as friends, and brethren, in favour of a man, whom I view as an enemy, and a tyrant.

"I shall also feel but little inclination to take an active part in punishing or restraining my fellow citizens for a supposed intention only—to gratify or remove the fears of the minister of a prince who openly withholds from us an invaluable right; and who secretly instigates against us a most savage and cruel enemy.

"But whatever may be my private opinion, as a man, as a friend to liberty, an American citizen, and an inhabitant of the western waters—I shall at all times hold it as my duty, to perform whatever may be constitutionally required of me as governor of Kentucky, by the president of the United States.

(Signed)

"ISAAC SHELBY."

A letter so singular, as to be unprecedented, will be thought to merit some animadversion. Which will be brief. It affects, to put the president, into possession of all the information which the governor had in relation to the French enterprise; and in fact, conceals from him the correspondence which the author had with the agents of Genet, and the fact, as well as the contents, of that minister's letter to him. It refers to report, and feigns not to consider, as real design, what he was assured, at least by Depeau, as early as the 28th of November, was the object and intention of the mission to Kentucky. It represents those Frenchmen, as having lately arrived—when he had their letters of the 25th of the last November, dated Knob Lick, near his own farm. And it states, that they were publicly avowing their illegal, and clandestine purpose; notwithstanding the author knew that they had received his admonitions, and declarations of what he *must* do in his *present situation*. It was

obviously intended to deceive the president, even supposing he had not seen or been informed of General Clark's manifesto—by suggesting, that nothing had been done. The delay, and lapse of forty-five days, or more—the time which the governor knew those men, had been in Kentucky—and that General Clark had the commission, &c.; furnish grounds for the inference, that it was expected, calculating on other unavoidable delays, before the president could institute other means to prevent it—that the expedition would have been on the Mississippi.

Nor does such an inference, although it implies a complete compromise of official duty on the part of the governor, do the sentiments, and feelings, avowed in the subsequent part of the letter, the least injustice. Let the moral state of the author's mind be ascertained, before, and when, he wrote the apology for the outrage, and insult, committed, avowed, and intended to be consummated by a foreign commission on the authority, peace, and dignity, of the United States, and his own state, and it will be found, in the lowest stage of degradation, on that branch of his public duties. Nor would it be any mitigation of the reproach, to suggest, that the attorney general, or the secretary of the commonwealth, or any other member of the Democratic society, had drawn up the argument for him—and that as he received it, so it was transmitted, without examination, to the secretary of state of the United States.

However the facts might be disguised, the communication could not deceive the president of the United States; either by its sophistry, or the part that the governor could be relied on to act—and he gave him up to Edmund Randolph, who had been attorney general, and was by the time the letter was to be answered, secretary of state of the United States. And who, in a long letter, which is not material to this part of the history to recite, attempted to teach the governor his errors, and his duties. The exact effect of which is not known; as the obnoxious enterprise was rendered abortive from other causes, which will be concisely delineated.

The receipt, and perusal, of the governor's letter, could but recall to the mind of the president, that of the preceding October; which produced a contrast as striking, as the effect was painful. The president, had at once a clear conviction, that a total defalcation had taken place in the governor—that having the prejudices of the man to contend against, he could not rely upon the co-operation, of the *officer*, to repress the hostile designs of the French agents in Kentucky—and he appealed, to the good sense, and real patriotism of the great body of the people, by proclamation bearing date the 24th of March, 1794: in this, he informed them of the illicit project, and warned them of the danger of embarking in it. This measure had been delayed, from motives of delicacy, and respect, towards the governor of Kentucky, from whom it had been expected; as well from the communications made to him, as from his early assurances. This proclamation, operated as a real check, to a considerable extent—several persons who had received commissions, and one, of the rank of general, whose name could be mentioned, and his personal communications recited, (but that it is intended to withhold the names of those who abandoned the enterprise,) which he said he “had been induced to believe, by a member of congress, was agreeable to the president of the United States—and that he did not know to the contrary, until undeceived by his proclamation.” Those who adhered, could but feel some embarrassment; notwithstanding they might apprehend no danger from the high public functionaries of Kentucky: who existed in a most singular state of disaffection, and enmity against the general government. The sole federal judge, Harry Innis, and one, or more, of the judges of the state court of appeals, implicated in the former intrigue with Spain, were reduced to silent observation; with what predominant feelings, is not exactly known: while other public characters, of official importance, were in similar predicaments.

The judge, whose name has been mentioned, shall himself be the witness of his own privity, and connivance. The following extracts are from a deposition given by him, in the case of Sebastian, hereafter to receive more particular attention.

"This deponent observes, that it must be known, and recollected by some of the committee the violent heat that pervaded this state, arising from the publications and proceedings of the Democratic society in Lexington, and some other places—that it must be known and recollected, that the French minister, Genet, had sent his emissaries to this state to excite the people of Kentucky to offensive measures against the Spanish province of Louisiana—that officers were appointed to command an army to be raised for that purpose; and that report said it was to consist of two thousand men.

"The truth of these facts, the deponent has no doubt can, if necessary, be proved."

Again—"The deponent further states that such was the heat of the public mind at that period respecting the navigation of the Mississippi, that he avoided the meetings of the Democratic societies, lest their measures should lead to acts which would attract the notice of the general government, and prosecutions be instituted, which could only be done in the court in which this deponent presides."

The deponent, to support his statements, as it is conceived, produced, an address from the Democratic society of Lexington dated the 13th of December, 1793: and also a letter signed Auguste Lachaise, dated it is supposed in May 1794, stating that two thousand brave Kentuckians had been recruited to march against the Spaniards in Louisiana, to assist the French regain that country.

On these evidences no comment is deemed necessary. The more clearly however, to represent the state of things into which this French intrigue, by the aid of the Democratic societies, on the one hand, and the connivance, and the countenance of those whose official situations on the other, required them to suppress it, had placed Kentucky—and to exhibit still further, a picture of the times—some extracts will be given from the address, referred to, by Judge Innis. They follow:

"This measure is not dictated by party, or faction—it is the consequence of unavoidable necessity. It has become so from the neglect shewn by the general government, to obtain for the citizens interested therein, the navigation of the Mississippi."

"The navigation of the Mississippi was solemnly given and confirmed by Great Britain to the citizens of the United States, by the provisional articles entered into at Paris, between the two nations." It then proceeds to represent that more than eleven years had elapsed, during which this irrefragable right had been denied. Asks what has been done by the former or present government—states that repeated memorials had been presented to congress, which had been treated with neglect, bordering on contempt. Once a disgraceful offer had been made to barter away the right. The government was changed; new hope had arisen, only to be disappointed—latter memorials were treated as the former had been. Six years had passed away, and the right not yet obtained. "Money is to be taken from us by an odious excise: but the means of our obtaining our just right is denied. In the mean time, our brethren on the eastern waters, possess every advantage which nature, or contract, can give them."

"Alas! is the energy of our government not to be exerted against our enemies? is it all to be reserved for her citizens?"

"EXPERIENCE, fellow citizens, has shewn us that the general government, is unwilling that we should obtain the navigation of the river Mississippi. A local policy appears to have an undue influence in the councils of the union. It seems to be the object of that policy to prevent the population of this country; which would draw from the eastern states their industrious citizens." Again—"But if they are not unwilling to do us justice, they are at least regardless of our rights and welfare."

After this, a remonstrance to the president and congress, is recommended. It is said, the crisis is favourable; that Spain, is engaged in a war with France—that if we wait for peace, "we must then contend against her undivided strength."

"But what may be the event of the proposed application, is still uncertain. We ought therefore to be still upon our guard, and watchful to seize the first favourable opportunity to gain our object. In order to this, our union should be as perfect and lasting as possible. We propose that societies should be formed in convenient districts in every part of the western

country, who shall preserve a correspondence upon this and every other subject of general concern. By means of these societies we shall be enabled speedily to know, what may be the result of our endeavours—to consult upon such further measures as may be necessary, to preserve union, and finally by these means to secure success.”

The following paragraph is the conclusion:

“Remember, that it is a common cause which ought to unite us, that that cause is indubitably just, that ourselves and posterity are interested, that the crisis is favourable, and that it is only by union that the object can be achieved. The obstacles are great, and so ought to be our efforts. Adverse fortune may attend us, but it shall never dispirit us. We may for a while exhaust our wealth and strength—but until the all-important object is procured, we pledge ourselves to you; and let us all pledge ourselves to each other, that our perseverance and our friendship, will be inexhaustible.”

This was signed by JOHN BRECKENRIDGE, chairman; attested by Thomas Todd, and Thomas Bodley, clerks:” and addressed, *“To the Inhabitants of the United States west of the Allegany and Apalachian Mountains.”*

The following extracts are from another democratic publication, called “The Crisis.”

The president of the United States, in his message of the 5th of December, 1793, to congress, having said, that the state of negotiation with Spain should be the subject of a *confidential* communication; it made the text, of the ensuing commentary:

“If ever a free people have been more degraded and insulted, or borne degradation, and insult with a more submissive patience, than you, ye people of Kentucky! let an example be produced. To search for it in the government of despots, would be fruitless, for though partiality and oppression are there found, yet they are destituted of duplicity; and the oppressors and oppressed understand each other. The latter expect what they receive, and are not mortified, or disappointed. To freemen, the mortification, and disappointment are exquisite: because having no right to calculate on par-

tiality or oppression, the actual experience of either is intolerable."

Again—"From government you have nothing even to hope. They never did intend—nor will they ever invest you with the right to use the Mississippi. Its procurement depends solely on ourselves. And this, my fellow citizens, is the *crisis*—the critical moment."

Next, the war in Europe is alluded to; and American counsels, put out of the question. Then follows:

"Louisiana, groaning under oppression and tyranny, is imploring you with uplifted hands."

But to conclude this farrago, of democratic excitement, to anarchy, or to war; take what follows.

"To those remaining veteran patriots, whose footsteps we followed to this distant desert, and who by their blood and toil have converted it into a smiling and delightful country; we now look up. Under your guidance we fought, we bled, and we conquered this country: under your guidance we still wish to fight, and bleed, while any appendage to its complete enjoyment remains to be procured. Strength, courage, and firmness, are now at your service, ready to be directed by your experience and wisdom. Our lives and our fortunes we are free to hazard in the attempt—and so long as we can wield a sword, or raise a shilling, they shall, if you lead the way, be devoted to the procurement of this right."

This was indeed, a *crisis*—in the affairs of the union, as well as in the character, and fate of Kentucky. Defection and treachery infected their councils—faction, and discord, disturbed their repose; menaced their peace; and endangered their safety. This faction, coextensive with the United States; but more particularly active in the southern, middle, and western, sections of the country; was stimulated by that infuriated Frenchman, Genet, at the seat of the federal government; formed into corresponding societies, reduced to system—directed with skill, unrestrained by truth, or justice—determined by a most inveterate spirit of opposition to the administration of the government—heated by the restraints which were opposed

to its desire of taking part in the war, on the side of France—and impatient to get hold of the reins of government—it withheld from the administration, every support within its power; giving it, at the same time, every possible annoyance—by supporting its enemies; by intimidating its friends; and by misrepresenting, and hiring unprincipled writers to misrepresent, its character, motives, and measures. Let these things be judged of, by the specimens, which were exhibited in Kentucky, and she will not be supposed the worst; yet the picture thus produced, and applied to the whole, will not be overcharged with deformity. Such is the nature of faction, in a government, deriving its organization from the great, and almost indiscriminate, mass of population throughout the country. It invests itself with popular epithets—it affects a love of liberty, and the rights of the people, which it represents as being in danger from those in office—it suggests specious theories for the public good—it lays hold of the prejudices and passions of the ill-judging, because ignorant, part of the multitude—it neglects, and disdains to use, the constituted organs of the public will, until after it has first corrupted or seduced them—but on the contrary, if they possess integrity, the aim is to bring them into disrepute. And for this purpose, they, and their writers, assail their official and private characters, with foul slanders, and gross perversions of facts; actual falsehoods, and base calumny. If such was the treatment which Washington received from the faction of his time, who shall hope to escape? And that it was, let his own reluctant declarations, and a thousand other testimonies public in those times, but which cannot be introduced into this history, testify to posterity.

Let it be distinctly understood, that honest differences of opinion, as to objects, or systems of policy, grounding themselves upon truth and an adherence to the true construction and application of the constitution, although carried into opposition, against both public men and measures, when employed consistent with those fundamental principles, *truth*, and the *constitution*; whatever aids may be derived from co-operation,



exercised within the same restrictions, are *fair*—and no *faction*. It is falsehood, and the perversion of the constitution, or laws, which are seen to take place, in relation to governmental men, or measures, by means of others, which mainly distinguishes **FACTION** from an **HONEST OPPOSITION**.

The aim of the latter, is to displace, or correct, that which is really thought wrong; by the application of intelligence, and reason, to real matters of fact. While the ruling objects of faction, being the honour and emolument of its leaders; it resorts to sinister means; employs falsehood, and the vilest, as well as the most adroit means, to accomplish its ends.

Then those may be considered factious citizens, whether in a minority, or a majority, who from time to time agitate the people, by inflated, and inflammatory addresses, to their local feelings, or incidental prepossessions; in which the real state of public measures is misrepresented; the characters of public men, or their motives, traduced; or the violation of the constitution, or of constitutional law, urged upon them.

This is sometimes done, by restless and ambitious individuals, without concert, to gain distinction, and to acquire popularity, for future use. In the particular instance endeavoured to be illustrated in this part of the history, not overlooking other considerations, the course adopted and pursued, was prompted by aims and designs, as already suggested, still more profound and momentous. The objects were distinctly seen, though at some distance, in perspective, and the scheme of operations digested; which, could it be executed, was to leave WASHINGTON, and those of his political principles, out of office, and to put JEFFERSON in his place.

Democratic societies, their addresses, and publications, and all the mighty machinery of opposition to the federal government, were so many developments; while their connexion with the French minister, and their passion for France, but so many clues leading the minds of attentive observers, to the ulterior objects of the grand drama, at that time in rehearsal.

The circumstances of the times, were thought peculiarly favourable, by the leaders of the faction. The government

was involved in dispute with Great Britain—engaged in difficult negotiations with Spain—in jeopardy from France—actually at war with various tribes of Indians, on an extensive frontier—and agitated by intestine commotions, growing out of an attempt to raise internal revenue; of which the administration was greatly deficient; and without which, it was to become nerveless, and impotent. The faction was, therefore, presented with the flattering prospect of triumphing over that governmental administration, which had hitherto held it in check: and the leaders deemed it expedient to place their whole means in active requisition. Their ardent desire for a war with England, had two motives; one to embarrass the general government, which was unprepared for it; the other was, to aid France, and overthrow her opponents.

If they supported, as they did, the insolent usurpations, and more extravagant pretensions of Genet, it was but to ensure his influence to their side—if they countenanced democratic societies, and abused the whiskey tax, it was to extend and organize disaffection to federalists, and the government—if they fomented insurrection, it was to obstruct the collection of the revenue—if they abused and opposed the mode of making war with the Indians, it was to destroy or abolish the little army which the government had on the frontier. It is well known, that the position of General Wayne, gave some of our Kentucky *patriots* of the day, most exquisite pain. For they were no less desirous of removing whatever might annoy them, than they were vigilant to avail themselves of every circumstance in their favour.

The government, ostensibly founded on the virtue and intelligence of the people, might reasonably be supposed to have secured to the most intelligent and virtuous part of them, an ascendancy in her councils. But no such thing. The government, in fact, emanating from the popular mass, almost without distinction, is no less dependent on their ignorance, vice, and folly, than on their better qualities and qualifications. It is a government radically and essentially dependent on POPULAR OPINION; in the formation and support of which, their follies

and vices are as likely to take the lead, as their wisdom and virtue. One thing is offered, as the result of experience, and worthy of further observation; which is, that politicians who rely upon the latter, will fail twice, where those who depend upon the former, will fail once. While it is to be admitted, this was no secret to the leaders of the opposition; but on the contrary, was the basis of their calculation, and the foundation of their hope and expectation of success. To effect the change desired in the administration, it was first necessary to produce a change in the sentiments and opinions of the great body of the American people. But in the affairs of government, ever intricate to the people, because beyond their comprehension, they are compelled to look to a few men, or to one man, in whom they place confidence, as their guide. At the time treated of, Washington was, and had been, that man, with all that part of the American people who were denominated *federalists*. The other portion, known as *anti-federalists*, had not, until very recently, and perhaps not in December, 1793; any ostensible and avowed head. Previous to that time, however, some of the knowing ones had looked to Mr. Jefferson as the man. Nor was he, without intimations of the kind—which he received with equal gratification, and complacency. Nor was it very long before a suspicion, growing out of his own conduct, was attached to him, of *DESIGNING TO SUPPLANT WASHINGTON IN THE GOOD OPINION AND CONFIDENCE OF HIS COUNTRYMEN*. He could not remain ignorant of his being understood. He could not retain his official situation—became restless in his office—intimated an intention of resigning—and did actually resign in the course of the winter: thenceforth standing out as the man avowed: to whom the faction then looked up to as their head.

The complete development of this intrigue, belongs to the history of the United States; to which this has no pretension, farther than Kentucky is concerned; and even that, although an indispensable part of her history, will, it is not doubted, extort execrations, that will fall on the book, and on the author, with the design, if not the effect, of traducing both.

From the representations already given, it will be perceived, that President Washington, must have found himself in very unpleasant circumstances. Yet, however disaffection, or treachery, might wound his feelings as a man, they but stimulated his vigilance, without embarrassing his counsels, as an officer of the nation. He had solicited the recall of Genet. He was still supported by faithful friends, in the cabinet; and by the majority of the people, throughout the United States. The energies of his mind were devoted to the service of his country, and to promote and harmonize the interests of every part. The preservation of peace with the great powers of Europe, was, in his judgment, indispensable to the prosperity, perhaps to the existence, of the union of the states. To preserve the neutrality which he had declared, was but a necessary means to the great end proposed.

Additional instructions were given to General Wayne. Among other things, a military post was ordered to be established at Massac, on the Ohio—that if peaceful means should fail of its desired effect, upon the Frenchified part of the citizens of Kentucky; that they might be operated upon by those of a more pungent nature, should they attempt to carry their provisions, arms, and ammunition, by that route to the Spanish territories, with hostile intent—the scruples of Governor Shelby, to the contrary, notwithstanding. What would have been the termination of this particular branch of the grand scheme for revolutionizing the government, cannot be known, and need not be conjectured, if a revolution had not taken place in France; which produced the recall of Genet, occasioned the condemnation of his measures, and the utter defeat and dismay of his agents. Until this event was known in Kentucky, the project was in operation; and as it would seem from subsequent disclosures, all but ready to resolve itself into military practice and evolution. The Democratic society, in the mean time, co-operating with unabated activity, and good will. Of the governor, and the sole judge of the federal court, it need only be said, that they saw, and permitted.

On the 4th of May, 1794, a special request, was published, that the members of the Democratic society would attend a

meeting in Lexington, on the following Monday. Soon after which, there appeared in the Gazette, an address, "to the inhabitants of Western America." In this, the old topics, eastern enmity, and the navigation of the Mississippi, were put in a high state of preparation; and made to run the round of popular feeling, with a new impetus, and improved tone of sentiment. From which the following sentences, are extracted, as characteristic of its temper, and indicative of its object.

"The time is now come when we ought to relinquish, our claim to those blessings, proffered to us by nature, or endeavour to obtain them, at every hazard."

"The principles of our confederation have been totally perverted by our Atlantic brethren."

"It is a fact, incontestable, that they have endeavoured to deprive us of all that can be important to us as a people."

"To you then, inhabitants of the west! is reserved the display of those virtues, once the pride and boast of America, uncontaminated with Atlantic luxury—beyond the reach of European influence, the pampered vultures of commercial countries have not found access to your retreat."

"A noble and just occasion presents itself, to assert your rights—and with your own, perhaps establish those of thousands of your fellow mortals."

"Reflect that you may be the glorious instruments in the hands of Providence, of relieving from the galling chains of slavery, your brethren of Louisiana," &c.

It is known, that Citizen Governor Shelby, had with the letter of Depeau, received a copy of the French address to the people of Louisiana, on the subject of the intended expedition, which he was desired to participate with "the noble society of Democrats." It is known also that Lachaise was in correspondence with the same society—and it is obvious, that an allusion is made to the intended irruption into the Spanish territory, in the foregoing extracts.

But they are not all. The same address proceeds: "Before I close this address, I cannot but observe with what indignation must the citizens of Kentucky view the conduct of the *general government*, towards them in particular. In answer to their

decent and spirited exertions, they receive, instead of assurances of relief from oppression, denunciations from the executive; and are held up to public view, as the disturbers of the peace of America. And a miserable fragment of the mighty legions of the United States, is destined to awe the hosts of freemen who seek but their right." There was much more, of the same kind. Let this, however, suffice to shew "the faction of the times," as it connected itself with French affairs: its further concern with the revenue, will engage future attention, when the account of this intrigue is closed. Which, to preserve the unity of its parts, will be continued; notwithstanding it will leave several transactions, and the legislative session, of 1793, for a time unnoticed. But this "noble society," had not yet heard the fate of its still more noble patron, Mr. Genet.

Cotemporaneous with the time alluded to by the foregoing extracts, the democratic societies had taken such hold of popular opinion, in sundry counties, and so relied upon moulding it to their purpose; that, deeming the state constitution within the scope of their views, it was assailed in print—the senate, as being an *aristocracy*, too independent of the people; and the criminal code, which it had not abolished, as being cruel, and bloody. Because it had retained the gallows, and permitted hanging for certain crimes. And which, it is to be confessed, very naturally led such men to reflect on the subject with disapprobation.

A correspondence was also opened by means of a committee of the society, with a similar organ of one of the democratic societies of Pennsylvania; where they were plenty, and particularly active in the *holy* cause of insurrection against the general government.

But wo to the projects of French democracy, in those days! involving in no small degree, at least, the democratic societies of the United States; and those of Kentucky, in particular.

Democracy in France, seems to have resembled a ferocious animal, with more hands than its many heads could employ; while those unemployed by itself, were engaged in lopping off heads, until it took a new direction, and employed them;

which threw the others out of its employ, and into the occupation of cutting off heads; and so on, alternately. So it was, however, that a bloody revolution took place; Genet was recalled, and his doings disavowed. Thereby terminating the mission of Citizen Lachaise; annulling the commission to Gen. Clark, and his followers; and relieving Governor Shelby, from the pain of perusing letters from the secretary of state of the United States, which, in recalling his attention to his duties, could but reproach him with neglecting the most important of them.

On the 14th of May, or thereabout, Lachaise communicated to the Democratic society of Lexington, an account of the sad catastrophe. He said, "that causes unforeseen had put a stop to the march of two thousand brave Kentuckians, who were about to go and put an end to the Spanish despotism on the Mississippi; where Frenchmen and Kentuckians, united under the banners of France, might have made one nation, the happiest in the world; so perfect was their sympathy." Consoling, however, "this august assembly," for the disappointment and delay occasioned by the late unexpected turn of affairs, by assuring them *that he would make honourable mention of them to the national convention of France: to which they were referred for ulterior aid.* And the fact has been disclosed, by one of its clerks, that on the day above mentioned, the society acted on this valedictory; but the particular character of the transaction has not been manifested to the public; whence the inference is fairly deducible, that it was inconsistent with their duty, and probably a violation of their allegiance, as citizens.

However much the democratic societies might deplore the change, which wrested from them the fraternity and assistance of their French friends; and deeply as they might regret the loss of so potent an agency in disturbing or obstructing the operations of the general government, they had yet all the subjects of their complaint left in full force—the navigation of the Mississippi, the Indian war, the excise; and another, yet, even more precious, which had acquired new interests, "the controversy with Great Britain." Nor did they doubt of the

future co-operation of French agents, and of French influence. British interference with the American commerce, furnished new topics for war with England; which they not only passionately called for, but fomented, and ardently desired. The faction was, therefore, only put to the trouble of adjusting their batteries to the different objects of attack; which might produce a momentary suspension of their march, but by no means diverted their attention from the grand design, or diminished their hopes of ultimate success.

The 24th of the month, was published, as the result of a large and respectable meeting in Lexington, assembled from the different parts of the state, the following resolutions:

"1st. That the inhabitants west of the Apalachian mountains, are entitled by nature, and by stipulation, to the free and undisturbed navigation of the river Mississippi.

"2d. That from the year 1783 until this time, the enjoyment of the right has been uniformly withheld by the Spaniards.

"3d. That the general government, whose duty it was to have put us into the possession of this right, have, either through design or mistaken policy, adopted no effectual measure for its attainment.

"4th. That even the measures they have adopted, have been uniformly concealed from us, and veiled in mysterious secrecy.

"5th. That civil liberty is prostrated, when the servants of the people are suffered to tell their masters, that communications which they may judge important, ought not to be intrusted to them.

"6th. That we have a right to expect, and demand, that Spain should be compelled immediately to acknowledge our right, or that an end be put to all negotiations on that subject.

"7th. That the injuries, and insults, done and offered by Great Britain to America, call loudly for redress; and that we will to the utmost of our ability support the general government in any attempt to obtain that redress.

"8th. That as the voice of all Eastern America has now called on the president of the United States, to demand that



redress of Great Britain, Western America has a right to expect and demand that nothing shall be considered as a satisfaction, that does not completely remove their grievances; which have a stronger claim to satisfaction, both from atrocity and continuance.

"9th. That the recent appointment of the enemy of the western country, to negotiate with that nation, and the tame submission of the general government, when we alone were injured by Great Britain, make it highly necessary that we should state at this time our just demands, on the president and congress.

"10th. That the inhabitants of the western country have a right to demand that their frontiers be protected by the general government; and that the total want of that protection, which they now experience, is a grievance of the greatest magnitude.

"11th. That the attainment and security of these our rights, is the common cause of the western people; and that we will unite with them, in any measures that may be most expedient for that purpose.

"12th. *Resolved, as our opinion,* That measures ought immediately to be taken to obtain the sense of the inhabitants of this state at large, that no doubts may be entertained of their opinions and determinations on these important subjects; that we may be able to communicate, *as a state*, when it shall be necessary, with the other inhabitants of the western country.

"13th. *Resolved,* That it be recommended to every county in the state to appoint a committee to give and receive communications on these subjects, to call meetings of their counties; and when it may be expedient, to call upon the people, to elect proper persons to represent them, in CONVENTION, for the purpose of deliberating on the steps which will be most expedient for the attainment and security of our just rights."

And thus was the vista opened to discord and revolution! Let it suffice to say, that this project, of getting up committees, (that of democratic societies having failed, except in a few

instances,) did not succeed. And although the attempt to call a convention was followed by others of the same kind; and in some counties neighbouring to Lexington, meetings called, and attended by the president of the democratic society of that place, and others, who urged the measure in speeches; yet, such was the good feeling, and sense of propriety, in a great majority of the people, that they discountenanced the idea—and the attempt fell abortive. Except in a very few counties, committees even were not appointed.

In fact, notwithstanding the information given by direction of the president, to Governor Shelby, and intended for public information, had been withheld from the people; and although much heat was excited among them, at places, they seemed disposed to rely upon their governments: and Washington still held the first place in the confidence of a majority.

Intelligent, and reflecting men, knew that so far as their rights, or interests, were confided to him, they would neither be neglected, nor abused. They knew, that the navigation of the Mississippi was not at his disposal, nor that of congress—that the army was advanced into the Indian country, for the protection of the frontier—that revenue was necessary, and that nothing could be done without its collection—that there was a prospect of an amicable adjustment of differences with Great Britain, and with Spain—and in short, that those who were agitating the people, and goading them on to violence, were chiefly restless and ambitious demagogues, and their dupes, whose object was to serve themselves, regardless of the public peace, or prosperity—that the course of prudence, as well as of duty, was to abstain from their measures: and they did so. They had however, other, and new adventures, offered to them, for future topics of history.

It will be recollected that the year 1793 has already been noticed, as producing democratic societies, and the intrigue of Genet; but it remains to bring up the arrears of its occurrences in relation to the excise, or tax on domestic distilled spiritous liquors. As this tax was imposed by an act of con-

gress, it of course was uniform throughout the United States; and Kentucky came in for her share, but no more. Inasmuch however, as she was emphatically a grain country, so she was also a whiskey making country; and upon the subject of excise, as well as that of the navigation of the Mississippi, the democratic societies of Kentucky and the western parts of Pennsylvania conceived unwonted sympathy and fondness for each other.

Early in 1793 it was observed, that in Pennsylvania the opposition to the excise assumed an increased activity; that as the year advanced, the opposition grew; and that the institution of democratic societies was followed by the erection of liberty poles, which was the standard of opposition to the law.

While these proceedings were carefully and anxiously watched by the malecontents in this state, they were imitated, with the more caution, as they were seen at a distance, and it was suggested of them, as being obvious, that government would be compelled to interfere—the result of which, at the time, although doubtful, could not be contemplated without apprehension. There was also the less occasion for a forcible opposition in Kentucky, as George Nicholas had undertaken, in the character of lawyer for distillers, to prevent judgments against them for infractions of the law; and Judge Innis, who alone held the court, was contented that the law should not be executed.

If, nevertheless, great heat was produced, it was to be ascribed to the influence of a few individuals, and especially to the publications and debates of the Lexington democratic society, whose history has already been given, rather than to any proneness among the people towards disorder or violence. On the contrary, they resisted in a remarkable manner, the strong and reiterated attempts made upon their fidelity by speeches, and by newspapers, teeming, as has been shewn, with counsel, remonstrance, resolutions, or aggravation.

Opposition to the general government, hostility to England, and devotion to France, were the moving causes, as they were

obvious features, in the exhibition of this drama. The various shifting of the batteries to the different points of attack, were but so many evidences of generalship, or zeal, among the leaders; and of the devotedness and industry of partisans. It is no matter of wonder, if the people went astray, when their government and judges were ready to mislead them.

It does not belong to this history, or else it might here be told, how Mr. Jefferson's *partialities to France*, and Mr. Hamilton's *impartial course towards all foreign nations*, the first being secretary of state, the other secretary of the treasury, of the United States, and both in the president's cabinet council; no less than the prepossessions of the latter in favour of federalism, and of the former to anti-federalism, rendered them opponents, rivals, and enemies; to the great personal distress of Washington, ever detrimental to the public service, and even ominous to the peace of the United States—and how, notwithstanding the most friendly, and soothing attentions of the president, to Mr. Jefferson, that gentleman involved him, in the bitterness of his resentments against Hamilton; and after receiving from the president, expressions and assurances, such as should have satisfied him, could implicate Washington, in the grossest terms of newspaper invective, misrepresentation and abuse: or what was to the same effect, patronise dependents, and pay hirelings, to do it for him. In relation to this schism in his cabinet, said the president to Mr. Jefferson, "How unfortunate, and how much is it to be regretted then, that while we are encompassed on all sides, with avowed enemies, and insidious friends, internal dissensions should be harrowing, and tearing out our vitals." He then commends charity and forbearance, and says, "for if instead of laying our shoulders to the machine, *after measures are decided*, one pulls this way, and another that, before the utility of the thing is fairly tried, it must inevitably be torn asunder."

Again, after Mr. Jefferson had presented him some documents, designed to prove, that though desirous of stagnating the constitution, or rendering its adoption partial, until it could be amended, that yet, he wanted it adopted; the president

said, "I did not require the evidence of the extracts which you enclosed me, to convince me of your attachment to the constitution of the United States, or of your disposition to promote the general welfare of this country;" and then adds his regret at existing differences, &c.

With what effect, the publications in "The National Gazette," edited by one of Mr. Jefferson's clerks, his own letter to Matzei, and the publications of Bache, Duane, and Callander, as explained by their practical results, will demonstrate. When the party was organized, whatever Mr. Jefferson said, did, or countenanced, *in his private capacity*, might be written out as a law for the opposition, to the administration of the general government. The democratic society of Philadelphia, was remodelled after the arrival of Genet, and made the prime machine for disseminating faction throughout the United States, as that in Lexington was more particularly designed to operate in Kentucky; where an idea of its use and activity, has already been displayed. It remains to shew, from some extracts of letters, what the president thought of the treatment he received. He said—"The arrows of malevolence, therefore, however barbed, and pointed, can never reach my most valuable part; though while *up* as a *mark*, they will be continually aimed at me. The publications in Freneau's, and Bache's papers, are outrages upon common decency." Freneau was employed in Mr. Jefferson's office, and editor of the National Gazette.

In another letter, he said—"To misrepresent my motives; to reprobate my politics; and to weaken the confidence which has been reposed in my administration, are objects which cannot be relinquished by those who will be satisfied with nothing short of a change in our political system."

In another letter, he complained of his treatment as "being too gross for a negro, or even a malefactor."

Of democratic societies, it has been said by an impartial observer, that: "Faithful to their supposed founder, and true to the real objects of their association, these societies continued, during the term of their political existence, to be the resolute champions of all the encroachments attempted by the agents

of the French republic, on the government of the United States, and the steady defamers of the views and measures of the American executive."

In Kentucky, the course of opposition was to dissuade intelligent and respectable persons, from accepting, or exercising any office, under the revenue laws of the United States—and to this application of his talents, did the governor condescend; urging to those who had accepted, that it was an odious employment, and that it would destroy their popularity, and prevent their future promotion. It having been an object with the inspector of the revenue, to engage the best informed men he could, to accept appointments, knowing that such would not only understand the law with most facility, but that they would also execute it, in the least offensive manner. Even the governor, as well as others of influence, thought themselves worthily employed, in counteracting the views of the inspector, as by so doing, the business of necessity, must cease, or fall into ignorant hands, whose execution of it, would be defective; of which advantage would be taken, while censure and clamour would be accumulated upon the head of the principal officer in the state.

It is conceded that his appointment was peculiarly ungrateful, to such men as Brown, Innis, the remnants of old, and members of present intrigues, democratic societies, with which the country was infested; and with whose members her principal offices were filled. For there was an utter repugnance of feeling, and a total opposition of character, between Colonel Marshall, and such men.

The seasons however, succeeded each other as usual; and if there was any violence offered, it fell upon the innocent horse of the collector, whose tail, or mane was sometimes disfigured; or the bridle cut, or the saddle soiled, while the officer was in the execution of his duty.

In November, the legislature convened, and went to law making, according to precedent.

The first act to be noticed, was one to revise the laws of the commonwealth. Nothing was done under it. In the next

year, the same law was revised, and re-enacted; it experienced also an abortive result, as in the former year. In 1795, a new law was enacted, having the same object in view, a revision of the civil laws of the commonwealth. This latter act, giving longer time for the work, and otherwise providing more ample means, produced the revision, which was sanctioned by legislation, in 1796, 1797, and 1798.

Acts making provision for persons of unsound mind, and for the poor, were passed at this session. The first case was referred to any court with chancery jurisdiction, for inquiry, and authentication as to facts; with the ascertainment of the allowance for keeping; which was to be paid at the public treasury. The county court had the entire care of the poor of the county over which it held jurisdiction.

"An act more effectually to secure the constitutional rights and privileges of the citizens of this commonwealth," was enacted, after some opposition.

It is right, no doubt, that courts should possess the power of punishing contempts of their authority;" while, as has been seen, those of Kentucky, and even justices of the peace, had it without limit.

A case had occurred in a suit depending in the court of appeals, between James Wilkinson complainant, in chancery, and Humphrey Marshall, defendant, upon a very extensive and complicated contract for lands and land claims; which Wilkinson about five or six years after it was made, wanted to garble, so as to hold what suited him and avoid the rest, and which Marshall, willing to rescind, did not want garbled; which however, the court by its decree had GARBLED, in a manner very injurious to the defendant—who being permitted to state facts, to be reported by commissioners in order to enable their honours to enter up a final decree,—stated, among other things, that the decree was "partial and unjust, inasmuch as it garbled an entire contract;" but offered no obstruction to the authority of the court, nor any personal contempt to the judges: who were George Muter, Caleb Wallace and Benjamin Sebastian. The latter, being bondsman for Wilkinson, gave no audible opinion.

Upon the return of the report, Marshall was summoned from his farm, to court, for a contempt; which was set out, as the lawyers would say, *in hac verba*; only that in one part of it, the word "and" was used instead of "or," else "or" instead of "and." The defendant appeared in person, and *justified the words*; but contended that they did not constitute a contempt, of which the court could take cognizance, try, and punish, without a jury; and insisted on the trial by jury, as a constitutional right. The offended judges determined they were the triers; and the attorney general, Abraham Murry, who had succeeded Colonel Nicholas, addressed the court in a speech in support of the prosecution. When the defendant had said in reply, what he chose the court and audience should hear, he pointed out the error in the process verbal, and was discharged. The discussion in this case, had placed the subject in a strong point of view; and the act whose title has been recited, was a consequence of the occurrence.

Courts and judges were limited, to a fine of ten pounds, and to imprisonment not exceeding one day, without the trial by jury. Justices of the peace, were limited in like manner, to a fine of twenty shillings, or six hours' imprisonment.

To the foregoing enactments was annexed the proviso, "that the act should not extend to cases arising in the land or naval forces; nor to cases where persons served with process from any court, judge, or justice, should refuse to answer according to law, or to perform any decree, judgment, or order, of either." Such was the bill when presented—such it passed—and such it remains, and will remain, while a just regard to personal safety, shall teach legislators how to regulate a power, necessary in the administration of justice, but not less necessarily subjected to restraint.

The county of Harrison was created; to have effect from and after the first day of February, 1794: "beginning on the Blue Lick fork of Licking, at that point from whence a line parallel with Clark county line will strike a point to be found eight miles a due north course from Bourbon court house; thence a line to the mouth of Townsend creek, and up the



same to the mouth of Silas' run, thence up the main branch of said run to the head thereof; thence with the Scott county line so far as it continues on the dividing ridge; thence with said ridge to a parallel with the head of the south fork of Big Lick creek, and down said fork, to the south fork of Licking; then down the said fork to the mouth thereof; thence up the said Blue Lick fork to the beginning."

Representation was apportioned by an act of this session: it gives no account of the population, nor does it establish any ratio of representation;—but omitting both, it determines peremptorily, the number of representatives to be sent by each county. There being at the time seventeen counties, they sent forty-two representatives, apportioned as follows: Jefferson two; Shelby one; Nelson three; Hardin one; Logan one; Green one; Washington two; Lincoln three; Mercer three; Madison three; Clark two; Fayette six; Woodford three; Scott two; Bourbon five; Mason three; and Harrison one.

"An act for affording defence to the iron works on Slate creek," authorized a small detachment of militia to be stationed there. This was probably in pursuance of the governor's recommendation.

Fifty-four acts were passed this session; some to amend former acts—others to legalize irregular proceedings—a part to establish towns, inspections, ferries, or roads—and others, merely private or personal.

It should not escape remark, that there is no trace of the intrigue, actually in operation under the direction of French agents, who had announced themselves to the governor, as early as November, when the legislature were in session, in any of the acts or records of this session; nor any notice of the democratic societies; although, as already shewn, their course was opposed to all regular, and constitutional government.

The session was held in Frankfort; and there being yet no public buildings to accommodate the two branches of the assembly, they occupied different rooms in a large framed house, belonging to Major James Love.

In the two previous sessions, a chaplain had been employed, who appeared at the opening of the sitting each morning, and

offered up prayers, in the line of his holy functions, for the prosperity of the state, and the wisdom of her councils: and no doubt, expecting his being employed again in the same way, he attended in Frankfort, and for a few mornings, performed his appropriate offices. A resolution of the house of representatives, at length dispensed with his attendance, and none has been since employed, by either house, with any regularity or consistency; but for many years, have been dispensed with.

The receipts of revenue at the treasury, from the 15th of November, 1792, to the 15th of November, 1793, were four thousand nine hundred and twenty pounds: disbursements within the same time, four thousand nine hundred and twenty-one pounds. Such was the result of the first revenue year.

## CHAP. III.

*Further account of Indian hostility—Internal occurrences—General Wayne moves upon the enemy—his victory, and other proceedings—Other hostilities—Whitley's biography—Treaties, and general peace—Western Insurrection—Proceeding in Congress, and by the President—Mission of James Innis, how rendered futile—Proceedings in the Legislature, &c. &c.*

[1794.] IN committing to history the occurrences of 1794, those of a military aspect will be first in order; while it is thought conducive to perspicuity of detail, to keep them apart in narration, as they were in fact, from those of a civil complexion—the one being principally the concern of the United States; the other, of this state.

At the opening of this year, the situation of Kentucky was not less singular than portentous. The remaining leaders of the Spanish faction, hushed into a temporary silence and doubtful suspense, by an irruption of French agents and democratic societies, had co-operated with them nevertheless, so far as they annoyed the administration of the general government: but this French faction, threatening to overrun the Spanish territories on the Mississippi, and thus to kill the goose that laid the golden eggs, had also put the former in great consternation; while the new intrigue having completely conciliated the executive magistrate of the state to their plan of usurping the military force of the country, with which to involve it in a war, he cautiously concealed both the design, the means, and the progress, of it, from the great body of the people, and their legislature. Foreign events, fortunate for the nation, concurring with the vigilance of the president of the United States, happily prevented the explosion, which was in preparation, in the manner heretofore delineated; and thus saved Kentucky from open rupture, and public disgrace.

It is to be recalled to mind, that General Wayne, with the federal troops, were in winter quarters at Greenville, destined

for the towns of hostile Indians on the Miami of the Lake; at the time now reviewed.

In February, a rumour became general, that the Indians were for peace; and it was probable, there would be no campaign the ensuing summer. Much as the war had been exclaimed against, and cruel as it seemed, this news was by no means received in Kentucky with universal satisfaction. Some felt a strong passion for revenge ungratified; some thought the war made money plenty; and as to the loss of a few lives, either in the field or on the frontiers, it was no more than what the country, no longer in danger of being conquered, was used to, and could bear. There were others, both of the old and of the new faction, to whom General Wayne was particularly obnoxious at the head of the army, and would be still more so in the event of peace with the Indians. Besides, it was hoped that the war would embarrass the general government, and even produce hostilities with Great Britain. There was another event thought by the same men, under the influence of their sinister designs, highly probable, and which they contemplated with no painful anticipation; that was, the defeat of the army, in case it met the enemy. The consequence would, in their estimation, be, to put regular troops out of use; a thing they had been aiming to effect, with much assiduity, and equal solicitude, for several years, in order that the war should be devolved on mounted volunteer militia,—of course, to be drawn from Kentucky, and placed under the control of the leaders of the very *faction* here, which at the time endangered the peace, if not the independence, of the country.

In the mean time, the public prints teemed with inflammatory publications, specimens of which have been exhibited, on the subject of the navigation of the Mississippi; glancing occasionally at the Indian war, the excise, the hostility of Britain, the friendship of France, the mission of Mr. Jay, and whatever else could be tortured into a censure of the executive of the United States. As to the governor of Kentucky, he was sufficiently compromitted, in all his federal duties, to have the entire approbation of this intriguing faction.

Early in the year, the scouting parties of Indians renewed their incursions, which co-operated with other internal means to inflame, or to sour, the temper of the people.

An adventure of some singularity, occurring in February, will be next in order, and shall have its place.

A man in the Green River settlements, by the name of Joseph Logsdon, travelling on horseback, was fired on by two Indians, and both himself and horse wounded—the assailants at a small distance, moved rapidly towards him, while he to escape them dismounted on the opposite side of his horse, not able to carry him out of danger, while he, not much injured, attempted to get off by running. But the Indians, whose guns were now empty, set them down, and pursued him, with knives and tomahawks. One of them, being swifter on foot than the other, was all but ready to lay hands on him, when Logsdon turning on him, shot him in the abdomen. This stopped him—but by this time, the other came at him—Logsdon then clubbed his empty gun, and gave the Indian a blow, which occasioned him to retreat—who in his turn was pursued. In running through the brush and weeds, the Indian stumbled, and fell, dropping his tomahawk; which, before he could recover it, Logsdon seized, and with a blow despatched the owner. After this, Logsdon deliberately charged his rifle, and went in search of the wounded Indian; who, in the interim, had recovered his gun, and was sitting with it rested on a log which nearly concealed his body. When Logsdon discovered him at a distance looking as if determined on battle, and feeling himself much fatigued, without knowing the condition of the Indian, he prudently declined the combat: when he knew, that by going a few miles, to a settlement, he could get assistance. This he did. On his return with a party, to his great surprise he found the Indian dead of recent wounds he had inflicted on himself. Some knowledge of the Indian character, induced a conjecture, that this man, considering his wound incurable, had despatched himself, to avoid a painful and languishing existence—or else, finding himself incapable of moving out of the way of the white men, who he apprehended would find, and of course kill him, he preferred dying by his own hands.

Such has often been the result of the reflections of brave men, reduced to similar situations by the occurrences of war: a conduct highly reprehensible, because it is the duty of all men to cherish life while it lasts; and because, the incidents common to men, often bring to the relief of the unfortunate, assistance totally unexpected.

In March, the Indians stole horses in Hardin county; and Captain William Hardin, in pursuit of them, was wounded—but the horses were recovered. A company going through the wilderness, was defeated by Indians on Richland creek, four of the white men killed, and two others wounded, without any loss to the enemy. Four persons were killed, and a family broken up, on the Rolling fork of Salt river. In the neighbourhood of Georgetown, about the same time, a number of horses were stolen, part on Lecompt's run, the rest further on the road towards Cincinnati. In Shelby county, shortly after, two boys were killed; and horses stolen on Brashear's creek. These occurrences began to be considered more of individual, than of state concern; or else, every thing relative to the war was so completely referred to the government of the United States, that it seemed as if what General Wayne could not protect, was left without protection; for certainly, Indian depredation did not excite that sympathy of feeling, or vigilance of repulsion and pursuit, once so remarkable in the country. Had the political state of society, or the intrigue which had already tainted the governor, also extended to, and spread, as a leprosy, among the people?—Or were those feelings, always affected by scenes of savage cruelty, and the apprehension of common danger, left to fret and chafe themselves against the general government, for not furnishing a guard to every fireside? The state authority did little or nothing, for some time—parties were not pursued with former activity. Much speculation was indulged, as to the next campaign and its results. The governor was at length roused, and ordered out some scouts.

General Wayne had in the progress of the winter, by detachment, reoccupied the ground lost by General St. Clair, and there built fort Recovery; on a stream of the Wabash.

Intelligence was brought to him in May, that a party of British and Indians, were posted on the Miami, near the villages at the rapids; and then building a fort of considerable dimensions.

The general, determining to open the campaign as early as practicable, again called on Kentucky for aid, in virtue of the president's authority. The call was duly attended to by the governor, whose feelings had been restored to a tolerably correct tone, by the recent depredations in Kentucky; and by the subsiding of the fascination, which had been thrown over him, by the French intrigue, in consequence of its abortion, soon after he had so shamefully committed himself. For Governor Shelby, though a weak man, was never in his own mind, an enemy to his country. He had, previous to the call from General Wayne, put some militia detachments in motion, for internal security, as already mentioned; and to prompt their zeal, had given assurance of pay on the part of the state, should not the United States pay them, for their services: this had a good effect.

In June, fort Recovery was invested by a strong party of Indians, who after a violent assault with small arms, kept up the fire for about twenty-four hours; but sustaining some loss, they withdrew, and abandoned the enterprise.

About the middle of July, General Scott, who commanded the Kentucky militia, had assembled sixteen hundred volunteers, being the full number called for, or more. It is believed that those Kentuckians who had seen General Wayne's army the year before, gave a very different description of it, from that which had been given of the army of General St. Clair; which had removed much of the reluctance felt the preceding year, to serve or fight, with regulars.

From Georgetown, the general rendezvous, the troops marched for head quarters. On the 26th of the month, the general, with the first division, joined the regular army, at that time consisting of sixteen hundred effectives, well appointed, trained, and disciplined, to the entire satisfaction of their commander.

On the 28th, General Wayne put the united forces in motion for fort Recovery, and thence to St. Mary's, by an obscure route, with the view of surprising the Indians; but arriving the 9th of August, he found only deserted villages. The more effectually to ensure the success of his projected *coup de main* on this place, he had caused two roads to be cleared out from Greenville, in that direction, in order to attract and divide the attention of the enemy, while he marched by neither. All this generalship was, however, rendered of no avail, by Newman, a Kentucky volunteer, who deserted on the march, and conveyed intelligence to the Indians, that the army was approaching; in time for them to evacuate the towns. At this place a fort was built, and named St. Mary's probably; which occupied some days—in the mean time the residue of the Kentucky troops came up. On the 12th of August, several prisoners were brought to the general in chief; from these he learned, that the Indian forces occupied a camp near the British garrison, at the rapids of the Miami. And having in his camp, a man by the name of Miller, who had been long a prisoner with the Indians of those regions, and who very well understanding their languages and customs, General Wayne determined to send to them with a flag, and once more to offer them peace, with the friendship and protection of the United States, if they would be at peace; if not, war, and destruction, for which they might prepare themselves.

Miller did not like the mission. It was his opinion, from what he had observed, that the Indians were unalterably determined on war; that they would not respect a flag, but, probably, kill him: in short, he declined being the ambassador. General Wayne however, could think of no other as well qualified; and being anxious to make the experiment, he assured Miller that he would hold the eight prisoners then in his custody, as pledges for his safety, and that he might take with him whoever he desired. Thus encouraged, Miller consented to go, and deliver the message. To attend him, he selected from the prisoners, one of the men, and a squaw. With these



he left camp at 4 o'clock, P. M. on the 13th; and next morning at daybreak, reached the tents of the hostile chiefs, being near together, and known by his attendants, without being previously discovered. He immediately displayed his flag, and proclaimed himself "a messenger." Instantly he was assailed on all sides, with a hideous yell, and a call, to "Kill the runner! kill the spy!" But he, accosting them in their own language, and forthwith explaining to them the nature of his mission, they suspended the blow, and took him into custody. He shewed, and explained the general's letter; not omitting the positive assurance, that if they did not send the bearer back to him by the 16th of the month, that he would at sunset of that day, cause every prisoner in his camp to be put to death: Miller was closely confined, and a council called by the chiefs. On the 15th, Miller was liberated, and furnished with an answer to General Wayne, stating, "that if he waited where he was ten days, and then sent Miller for them, they would come and treat with him; but that if he advanced, they would give him battle." The general's impatience prevented his waiting the return of his minister. On the 16th, Miller came up with the army, on its march, and delivered the answer; to which he added, "that from the manner in which the Indians were dressed and painted, and the constant arrival of parties, it was his opinion, that they had determined on war, and only wanted time to get in all their friends" The general very well knew how to improve on this intelligence, and he continued his march. The 18th he halted the army, and built fort Deposit; about seven miles from the British garrison. Early in the morning of the 20th he resumed his march in that direction, and about 10 o'clock his spies, a mile in advance, were fired on. The army was then halted, and put into an order of battle. General Wayne with his regulars took the right, resting its right on the Miami; which he had crossed, and descended from the junction with the Auglaze. One brigade of the Kentucky troops, commanded by General Todd, was on the left; the other, commanded by General Barbee, was placed in the rear,

as a reserve. Major Price, who commanded the advanced battalion, finding the enemy posted in a thick brushwood, encumbered with fallen timber, the effect of a hurricane, and in great force, extending a right-angle from the river; returned with the intelligence to General Wayne; to whom he suggested that he had reason to believe, that the enemy were formed into several lines, which were extensive. The general in chief then ordered General Barbee to join Todd; and General Scott, who commanded both, was directed to extend the mounted volunteers far to the left, make a circuit, and turn the right of the enemy. The legion was then placed in two lines, while Captain Campbell, who commanded the cavalry, was ordered to the bank of the river; which he was to trace, until he penetrated, and passed, the Indian left. These dispositions being made, and Major Price sent to General Scott; the enemy still keeping his position, the march was resumed. The front line of the legion, a small distance in advance, was ordered to move with arms trailed, and to rouse the savages from their cover with the bayonet, before a shot was fired; then to deliver a full fire, and press the bayonet, so as not to permit the fugitives to recharge their pieces. Rapid was the advance on the enemy—while these orders, strictly executed, and the first, supported by the second line, inclining to the left, the enemy were intercepted in an attempt to turn the left of the legion; and the whole routed, put to flight, and pursued, with such spirit and promptitude, by the front, that but a part of the second line were engaged: while the Kentucky volunteers taking a circuit rather larger than necessary, were but very partially engaged, if at all. In less than an hour, the enemy had passed the British fort, and General Wayne halted in sight of it; where he encamped the army. No action has been more decisive—the loss of the legion in killed and wounded, amounted to one hundred and seven; among the former were Captain Campbell, and Lieutenant Towles. The loss of the Indians, probably did not exceed that of the United States troops; who freely exposed themselves, but the enemy as little as possible.

General Wayne continued to occupy his camp for three days. He there bestowed due praise on his troops, without distinguishing General Wilkinson; to whom however, full amends was made in one of the Kentucky prints of the time, in a style very much like his own former bulletins; and which was thought to be his own diction.

While in camp, a correspondence ensued between General Wayne, and Major Campbell, commandant of the British garrison; the latter inquired of the former, by what authority he approached so near his cannon, and insulted his command? In reply from the general, he was referred to the discharges of his firearms, and the retreat of the Indians; who had taken refuge behind his fortification: to this was subjoined an inquiry, by what authority he had erected a garrison, under a foreign flag, within the territory of the United States? adding further, that Major Campbell ought to withdraw. While the major, in return, declined all discussion of the question of right—announced his authority, from his Britannic Majesty—and his determination to maintain his post, until otherwise ordered by his superiors.

Never were two military men, not actually at war, placed in a more hostile attitude; or in a situation more critical, in time of peace. The Kentuckians, especially, much prejudiced, and even exasperated against the British, fired their rifles, and offered various insults within the range of the fort guns, when if one of them had been fired at the camp, hostilities would certainly have ensued. But which was avoided by the prudence and forbearance of the two commanders, or of Major Campbell, supported by the respect which they felt for each other; and for their own governments, then negotiating, with a view of adjusting, by an amicable treaty, all matters in controversy.

General Wayne, having sent another flag to the Indians, again offered them peace, and invited them to a friendly meeting; then showing some disrespect to the assumed jurisdiction of Major Campbell, broke up his camp, and returned to fort

Deposite: which he improved, and called Fort Defiance.— From this place, he moved the army to the main forks of the river, and built fort Wayne. The Indians having signified their pacific disposition, were invited to Greenville. About the 15th of October, the Kentucky volunteers were discharged, and returned home in good humour; having sustained little or no loss, yet flushed with victory, and almost ready to confess that regulars were nearly as good to fight Indians, as even mounted militia.

And now, the reader, tired of war, but not knowing the extent of it, might hope to hear the syren song of peace and safety, sung in Kentucky. Before, however, he resigns himself to so pleasing a delusion, as the idea of general tranquillity, and no more account of bloodshed, he is to be apprised, that the plan of this history renders it proper, to narrate the incidents of internal depredation, which continued to annoy the peaceful citizens; or those who fondly thought themselves at peace, pursuing their domestic occupations on their farms, or by their firesides: and that this part of the narrative, which was dropped, for the sake of preserving unity in the account of General Wayne's campaign; must be resumed, as of the June preceding. For in that month, the Indians killed a man at Mann's lick. The next day, they killed one about four miles from thence; and shortly after stole eight horses, from Salt river, between Bardstown and Bullett's lick. In August, they killed a man on Benson's creek, in the vicinity of Frankfort. In November, they stole horses from Mann's lick.

And now to advert to a diverging branch of the military stream, the adventures of William Whitley will be further narrated, but with a rapid pen; and hence with brevity.

Early in the summer 1794, the Indians depredated much on persons and property in West Tennessee, and the people, knowing the readiness with which their neighbours of Kentucky had assisted them, and placing particular confidence in Capt. William Whitley, they petitioned him to come with a party and take the command of an expedition against the Nickojack towns. He accordingly raised one hundred volunteers; al-

though at the time he was but a private—having the year before, thinking himself unjustly treated, by being neglected, and others preferred, before they had served, resigned his commission. He forthwith marched to the place of rendezvous; and there found Colonel Orr, with five hundred men, waiting for him. An important question to be decided, was, who should command? Colonel Orr, made no opposition. It was put to the vote, and decided without a dissenting voice, in favour of Whitley. He now had 600 men—who to entitle themselves to pay, were mustered under Orr's name—but who looked on Whitley, as commander. Each man, was equipped, and ready to march at a minute's warning; fifteen miles of the intended route was over mountains—and these to be traversed in the night. This is the first time, that it is recollected, to have heard of *horse artillery mounted*—The commandant, now colonel, by the brevet of his little army, had mounted a swivel, upon his own riding horse—so that he could wheel, and fire, in what direction he pleased. The balls provided, were wrought iron; he had obtained between twenty and thirty for the occasion. In the mountains the way was so difficult, that some perplexity was likely to ensue—they had but a small war path, and that often eluded the guides. To surprise the enemy was deemed of the utmost importance; and to accomplish that, it was necessary to cross the last mountain before day and cover the party, in its approach to the town, with the brushy forest of the plain. A moment's reflection suggested the means of relief—the mountains contained an abundance of pine trees, and they produced the light wood. Colonel Whitley, ordered search to be made, the knots to be collected, set on fire, and a torch thus made, to be carried, at the head of each company. At about an hour and a half, by sun, next morning, the town was invested, and assailed. Fifty Indians were killed, nineteen taken prisoners—and the place laid in ruins.

With twenty men, the colonel proceeded towards the Running-water town, but was stopped by a party of Indians, who met him boldly, and attacked, at the beat of the drum. They killed one of his men, and wounded another. The fire was re-

turned, two Indians killed—and the rest, being pressed, fled. Some papers taken from parties defeated on the wilderness road, travelling to Kentucky, were dropped by them, and taken up. A part of which appeared to have belonged to a Dunkard, who was supposed to have been robbed and murdered, by a set of white men, known by the name of Middleton's Gang—who had for a while infested the road: but who, it appears from the circumstance of the papers, had been for once wrongfully suspected: for he had certainly been killed by the Indians. Several articles of plunder, were brought from the towns; thereby evincing the hostility of the inhabitants; as white men's shirts, with bullet holes through them. A singular incident occurred on the return—a soldier by the name of Galloway, being placed on sentry, became panic struck—climbed a tall beech tree, from which he fell, and broke his back. This proved fatal to him.

What may serve to shew the daring intrepidity of Colonel Whitley, is, an enterprise, which after concerting with General B. Logan, he executed on his part, in the fall of this year. But General Logan, failing on his part, owing probably to the increasing prospects of a general peace, the main object of the enterprise was not attempted—which was to cut off the balance of those hostile towns, on the Tennessee river, and thus, end the war with them.

In order to obtain the means of transporting arms, &c. across the river, Whitley, was to proceed to Holston with a small party, there to procure canoes, and some supplies; thence proceed down the river to the appointed place of meeting, within eight miles of the Indian town: where, by a day agreed, Logan was to join him, with the men for the conquest, which they were to achieve, after a march through the woods. Whitley complied to a tittle; at the utmost hazard of his party, and his own life. When arrived on Holston, although the people were friendly and treated him well—yet Governor Blount, was quite otherwise—forbade his proceeding, and threatened to give intelligence to the Indians. He, faithful to his engagement, procured the canoes, and descended the river; although in his

caution, he lay by, concealed in the day, and travelled only at night—in doing which, the whole party were near being lost, at a place called the Suck. Surmounting all difficulties, he reached the place appointed for rendezvous, with great punctuality—and lay there three days, waiting for Logan; without seeing, or hearing from him. His canoes were then useless to him—his way home lay through a wilderness of 150 or 200 miles; generally a mountainous and knobby country, and not a horse to carry provisions for his men, ten in number, besides himself. The little provision they took with them on their return, was soon exhausted; in consequence of it, and seeing much Indian sign, which prevented hunting, they had nearly starved with hunger. They at length got home, and consoled themselves—that they had saved their lives; the more precious, for having been preserved three days on the flesh of one *Raccoon*.

This was the last hostile expedition that Whitley was on during that war.

Very soon after general peace, and before it had worn off the feeling of war altogether, he went to some of the southern towns to reclaim sundry negroes that had been taken in the contest; when he was put under more apprehension, than at any time in the course of open hostility. A half-breed, by the name of Jack Taylor, at Watts's town, who spoke English, and on whom he was compelled to depend, as interpreter; if he did not desire to have him killed, at least, determined to intimidate him; as it would appear by the following described manœuvre: The Indians were assembled, as the custom is, to hear "the talk;" and as soon as Taylor learned the business, he told him he could not get the negroes; and taking a bell that was at hand, tied it by a string round his waist, then seized a drum, and beating and rattling with all his might, raised the war-whoop. Whitley said, when telling the story, "I thought the times were squally—I looked at Otter-Lifter; he had told me, I should not be killed; his countenance remained unchanged; I thought him a man of honour, and I kept my own." At this time, the Indians gathered about him armed, but fired their guns in the air, to his very great relief.

The interpréter, Jack Taylor, finding that he was not to be scared away, and that he renewed his demand for the negroes, replied, that he could not get them—they were under the protection of the United States—"and your law say, prove your property." Whitley told him, if he must prove his property, he would go home, and bring a thousand witnesses, with every man his gun to swear by. "Woo!" says Jack, "too many! too many!" After a pause, he said there were three white prisoners, two girls and a boy, that would be given up; but the negroes could not, until the Little Turkey (a principal chief) returned. He came home in a day or two, and the chiefs of the nation were summoned to meet at Turkey town. It was there determined to give up the negroes, without putting Colonel Whitley to the trouble of bringing his witnesses, to prove his property by the sanctity of the rifle. All this reluctance, it became obvious, proceeded from the fact, that the negroes, as if every where devoted to slavery, were the compelled drudges of these demi-savages. One of whom, already named, seems to merit further notice. Otter-Lifter had raised himself to renown as a warrior—he never killed women or children, or prisoners—his friend, his word, and his rifle, were all he cared for. He said, "the Great Spirit, when he had made all the rest of the animals, made men, to keep them from eating all the grass, by killing, and eating them; and that, to keep men from being too proud, he let them die, or kill one-another, to make food for worms: that life, and death, were two warriors, always fighting; with which the Great Spirit amused himself."

In some of the intermissions of hostility, a kind of truce, that took place at times; this man, and Colonel Whitley, became acquainted. They were both warriors, and they conceived the highest respect for each other. As soon as the war was over, they were friends.

Some time after the affair of the negroes, Colonel Whitley visited the nation of Cherokees, and was every where received in the most friendly manner—they had plenty of deer and bear meat, which they boiled, or broiled; and corn, sometimes



parched, sometimes made into bread, or otherwise dressed—their hospitality was unbounded. He invited them to his house; where they came frequently, and were well pleased at their treatment: for he too, was hospitable.

Had there not been another war, here would close the narrative of Colonel Whitley's transactions; but as he afterwards merited notice, as a soldier, it is deemed both economical and justifiable, to enlarge this biographical outline, and to say at once all that is to be said about him.

William Whitley, this pioneer to the settlers in the wilds of Kentucky, was born the 14th of August, 1749, in that part of Virginia, then called Augusta; and which afterwards furnished territory for Rockbridge county. His father's name was Solomon, his mother's, Elizabeth—she was of the family of Barnett, before she married Mr. Whitley.

Unknown to early fame, the son grew to manhood in the laborious occupation of his native soil; in which his corporeal powers were fully developed, with but little mental cultivation. He possessed, however, the spirit of enterprise, and the desire of independence—among the best gifts of nature. In the month of January, 1775, having married Easter Fuller, and commenced housekeeping in a small way, with health and labour to season his bread—he said to his wife, he heard a fine report of Kentucky, and he thought they could get their living there with less hard work: "Then, Billy, if I was you, I'd go and see," was her reply. In two days, he was on the way, with axe and plough, gun and kettle. And she is the woman, who afterwards collected his warriors, to pursue the Indians. He set out with his brother-in-law, George Clark, only—in the wilderness, they met with seven others, who joined them, and travelled to Kentucky.

This was before Daniel Boone had marked the road. At the scenes which he witnessed, are similar to those witnessed by others, and already described; and his own character, displayed in the various incidents related, there is neither occasion, nor desire for repetition. Suffice it to say, he was on the expeditions of Bowman, and Clark. And now to close the

account, as he did his useful life, the year 1813 is to be anticipated. Then in his sixty-fifth year of age, he had volunteered with the Kentucky militia, under Governor Shelby, and fell in the battle of the Thames, bravely combatting for his country.

It was not necessity which urged him forth; for he had honestly acquired an independent fortune in the lands of the country, and left a family and home abounding with comforts. It was not ambition which prompted him to seek for fame—as to courage, there was no reputation for him to gain; and without command, there was no opening expected, for the display of skill. No: the parties of Kentucky militia had been unfortunate; his ancient foes were rather triumphant; a blow was to be struck, and he still felt that the weight of his arm could add something to its vigour. And were that but a mite, he freely cast it into the common stock. It was for this, he forsook all else, and went,—a private soldier:

And when hereafter, his monument shall be sculptured in Kentucky marble, let this be the inscription:—

“After often commanding in one war, with uniform success; and attaining an honourable old age—a second war, with the British, and Indians, drew him forth, a private volunteer, to the Thames: where, with the ardour of youth, and the intrepidity of a warrior, fell in battle, the patriot, and hero; Colonel WILLIAM WHITLEY, of Lincoln.”

And to bestow a last notice on Simon Kenton, who may be considered as the compeer of Whitley, let it be remarked, that at one time, he followed with his company, a party who had stolen horses, to the east fork of Little Miami, came up with them in camp, attacked them; and would have defeated them, but the firing alarmed some adjacent camps, whence reinforcements were immediately sent, which placed his party in the utmost danger: from this, he extricated it, by a timely retreat, with the loss of two men; that of the enemy was never known.

About the same time in the succeeding year, he attacked another camp of Indians on Paint creek; killed a man by the name of Ward, who having been taken a prisoner from Green-Brier, when young, had remained with the Indians.

In this attack, the Indians descended the bank of the creek, which concealed them; and Kenton, apprehensive of reinforcements to the enemy, left the ground before daylight.

Kenton commanded a company of horse on General Wayne's campaign, and was in the action.

In 1795, there being peace with the Indians, he from this time, turned his attention to the habits of domestic, and civil life: attained the rank of a major in the militia; and the character of a good citizen, and an honest man.

His early and general knowledge of the country, had enabled him to locate many land warrants; whence he was considered the proprietor of much valuable land. And here his want of education is to be regretted. He could not read, or write; circumstances which more or less, placed him in the power of every one with whom he made contracts; and in a manner withdrew from his view, or placed on his memory, those which he had made. The ease with which, as he supposed, he made land, induced him to sell out a great amount; and the purchasers, as was the custom of the country, paid for it with the most perishable materials. Besides, his locations, like those generally made at early periods, were seen to be vague, subject to dispute, and frequently lost. He thus found himself involved in controversy, and embarrassed by litigation, which presented an inextricable labyrinth of hazard, expense, and trouble; with which he became disgusted; and for which he left the state. Preferring rather to encounter the Indians on the frontiers of Ohio, than the law officers of Kentucky. He now bears the rank of general, and enjoys a competency only.

In November, a treaty was signed in London, by Grenville, on the part of his Britannic Majesty, and John Jay, on the part of the United States; which was announced in the course of the winter: one of the articles of which was, that all posts and places held by the British within the United States, should be surrendered; which confirmed the peaceable temper of the Indians, consisting of the Ottawas, Pottawatomies, Miamis, Ellriverwees, and Kickapoos, all of whom made formal peace with General Wayne at Greenville, in the summer, 1795.

The Six Nations, who had not actually joined the north-western confederation in the war, although they had become angry, were from the events above recited, wise enough to suppress their wrath, and enter into a friendly treaty with the United States, before disagreements ran to extremity.

In March, 1795, the Indians broke into a house in Clark county, and killed three negroes.

April, the president proclaimed the treaty with the northward Indians; but those to the southward were still at war, and Kentucky lay in the way of all. A family moving to a station on the wilderness road, were fired on, but escaped. Near the same time, two boys were taken by Chorokees returning home, who stole horses on Richland creek.

So ended a war of twenty years, by degrees; and peace, approaching also by successive steps, became universally prevalent in 1796, by a treaty with the tribes to the south, which extinguished the war.

The ratifications of the treaties with Great Britain and Spain, in the course of the year, confirmed this desirable state of things—in which President Washington saw his honest efforts for his country's safety, peace, and honour, crowned with the most complete success in every thing; except in curing the *faction*, which had taken its decided principles and character, under Genet and Jefferson, of its French prepossessions; of its malignity towards himself; of its hostility towards every thing exclusively American; and of its determination to rule, or ruin the country. It had, however, been brought to several awful pauses. As in 1794, by the defeat of insurrection, yet to be touched upon; and at the time previously alluded to, in 1796, also to be further noticed. But feelings too dear to their hearts; objects too precious to their love of power, and emolument; and now too long pursued with the hope of success, to be abandoned; while the same proportion of uninformed population remained in the United States, to be worked upon by misrepresentation of measures, or calumny of men, now grown familiar, and to anticipate Mr. Jefferson, "in the full tide of successful experiment," prompted it to persevere.

Was not the evidence complete; did not President Washington himself, furnish an instance, and a verification, of every thing that has been said of the faction, this history might have been written with a knowledge of its existence, without an insinuation against its motives, its morals, or its objects.

But knowing Washington, and also the leaders of the party, and their measures; and being compelled to notice some of them, or compromise an essential duty; these things, therefore, when treated of, were to be represented, as they were in point of fact, without exaggeration, or material diminution, as far as the account goes.

That the head, or leaders of the faction, should be implicated, has been unavoidable; an organized ramification of it being found in Kentucky, embracing the governor of the state, and affecting his official conduct in a most important part, and in a manner inconsistent with the honour, the peace, and even the safety of the country: thus the subject has been forced into the history, in a manner not to be avoided—And when noticed, shall it not be traced to its origin, examined in its sources, illustrated in its motives and objects, and demonstrated in its tendencies and consequences? Yes undoubtedly, so far as comports with the history of Kentucky, which necessarily prescribed its limits.

Among the first occurrences, in the civil department of the government of Kentucky, worthy of notice in the annals of 1794, is the letter of Governor Shelby, of the 13th of January; which has been recited in the account of the French intrigue, in the last chapter; and which should not be forgotten, although it need not be repeated. The next, is, the reply to it, by Mr. Edmund Randolph, who had succeeded Mr. Jefferson, as secretary of state, of the United States. This bears date the 29th of March, succeeding. Extracts from which will be given, to shew the state of information, possessed by the governor, on the subject of the Mississippi, in the vernal season of the same year; and while the Democratic society, continued to harass the public mind, with the published results of their meetings; without its being relieved, by even a communica-

tion of the intelligence so possessed—which it was the duty of the governor to have published.

The secretary proceeds:—"Thus far have I addressed your excellency upon the constitutional and legal rights of the government, which perhaps, are in strictness, the only topics belonging to the present occasion. But as it may not be known that the navigation of the Mississippi has occupied the earliest labours of the executive, and has been pursued with an unremitting sincerity, I will lay before you such a sketch of the pending negotiation, as may be communicated, consistently with the respect due to the nation in treaty with us, and the rules observed in such cases.

"The primary object in the instructions to Mr. Carmichael, who has resided for a considerable time at Madrid as charge des affaires of the United States, has been to throw open to your commerce that river to its very mouth. In December, 1791, it was verbally communicated to the secretary of state, by one of the commissioners of Spain, here, that his Catholic Majesty, apprised of our solicitude to have some arrangements made respecting our free navigation of the Mississippi, and the use of a port thereon, was ready to enter into a treaty at Madrid: and great indeed, was that solicitude. For although this overture was not as to the place, what might have been desired; yet was it attended to without delay, and accepted.

"As a proof of the interest, taken by the government on this subject, I might mention that not only was Mr. Carmichael, who had acquired an acquaintance with persons and circumstances in Spain, made a member of the commission, but Mr. Short, was added, as being more particularly informed of the navigation to be treated of.

"Instructions, comprehensive, accurate and forcible, were prepared by my predecessor; and if at this stage of the business it were proper to develop them to public view, I should expect with certainty, that those who are the most ardent for the main object would pronounce that the executive has been deficient neither in vigilance nor exertions.

"For many months have our commissioners been employed

In this important affair, at Madrid; at this moment they are probably so employed.

"The delays which forms may have created; the events of Europe; and other considerations which at this season cannot with propriety be detailed, dictated a peaceable expectation of the result.

"Let this communication then be received, sir, as a warning against the dangers, to which these unauthorized schemes of war, may expose the United States, and particularly the state of Kentucky. Let not unfounded suspicions of a tardiness in government prompt individuals to rash efforts, in which they cannot be countenanced; which may thwart any favourable advances of their cause; and which by seizing the direction of the military force, must be repressed by law, or they will terminate in anarchy.

"Under whatever auspices of a foreign agent these commotions were at first raised, the present minister plenipotentiary of the French republic (Fauchet) has publicly disavowed, and recalled the commissions, which have been granted."

The resolutions of the Kentucky legislature of the previous session, having been forwarded to her members in congress, a motion was made by her senators, to come to a resolution on the subject of them—the navigation of the Mississippi: which was referred to a committee, who reported, "that in the negotiation now carrying on at Madrid, between the United States and Spain, the right of the former to the free navigation of the Mississippi is well asserted, and demonstrated; and their claim to the enjoyment of it, is pursued with all the assiduity and firmness which the magnitude of the subject demands; and will doubtless continue to be so pursued until the object shall be obtained, or adverse circumstances shall render the further progress of the negotiation impracticable." &c.

For the special information of those immediately concerned, (Kentuckians) the report recommended it to the president, to communicate such parts of the existing negotiation between the United States and Spain, as with propriety he could. A resolution of the house of representatives, founded on docu-

ments laid before it, by the president, expressed like confidence in the course of negotiation.

And although the president had given correspondent assurances to the governor of Kentucky, by both Mr. Jefferson, and more recently by Mr. Randolph, as already quoted; he appointed Colonel James Innis, the brother of Judge Innis, a commissioner or agent, for the purpose of visiting the state, and making the communications personally. Of which, more hereafter.

In Kentucky, the leaders of the faction possessed too many faithful correspondents, at the seat of the federal government, not to have the earliest intelligence of what concerned them.

It is believed, that so soon as the pressure of the French partisans was withdrawn from the leaders of the Spanish party, they resumed their machinations; and found their present purposes, aided, and promoted by the Democratic society—whose members, as far as they knew the real design of the institution, were partisans of France, under the American leader; while the object of the other faction was still the same, as at first—*a connexion with Spain, by means of her Mississippi territories, and the pacific arrangements of a treaty.*

There is reason to believe, that John Brown, had detached himself from this Spanish party; either supposing that it could not succeed, or seduced by the more flattering prospects of the Frenchified American faction, recently organized. All that is worth observing, is, that he was decidedly hostile to the administration by President Washington; opposed to the regular army; yet inclined for war with England: and with equal inconsistency, opposed to a navy, and to the internal revenue. Yet, all this was perfectly consistent with his complaisancy to the intrigue, in favour of France; and then headed by Mr. Jefferson.

There is no doubt, but that as soon as Judge Innis found his respiration freed from French influence, he relapsed, to Wilkinson, and Sebastian. That there was an essential difference between these two parties, is sufficiently evinced, by the fact,



that John Breckenridge, who it has been seen was chairman of the Democratic society, was not present at any of the consultations of the Spanish junto: although members of the latter, might sit in the former. They each resembled their patrons; the one Spanish, the other French. Both agreed, in annoying, and weakening the administration of the general government. Had the attainment of the free navigation of the Mississippi, been the real object with either faction, by means fair and national—that is, through the operations of the government of the United States, there was not a man among the leaders so ignorant, or weak in judgment, as not to know, that their conduct was calculated to retard its acquisition, or prevent its attainment: of this knowledge they could not divest themselves.

What were their various objects, have already been stated; and cannot remain in doubt.

An active intercourse was resumed in this summer, between the Spanish partisans: among whom General Wilkinson was an important personage; and certainly a pensioner of Spain.

From 1789, so difficult were remittances rendered, that if any were received by him, it is not known. In 1794, six thousand dollars were shipped for him at Orleans, on board a public galley, under the care of Captain Richard Owens, a gentleman of broken fortunes, who lived near Judge Innis: who having on other occasions, furnished the general with agents for Spanish intercourse, on this, recommended Owens for that service. The galley ascended the river to the mouth of the Ohio; the dollars were there embarked on board a perogue, with six Spanish sailors, under Captain Owens, who going up the Ohio a few days afterwards, was robbed and murdered by his crew. One of the company, who did not participate in the crime, fled to New Madrid, and reported the fact. It spread into Kentucky, on whose remote shore the outrage had been perpetrated: and after a while, three of the murderers were arrested, in the neighbourhood of Frankfort, and brought before Judge Innis. He ascertained who they were,

refused to try them, "being Spanish subjects," although they had robbed his friend, and killed his neighbour, within his jurisdiction, and were then within his power; but quietly committed them to the custody of his brother-in-law, Charles Smith, who had held a commission under Genet, but was then out of employment; and who, with a little guard hired by the judge, was directed to deliver them to General Wilkinson, if at fort Washington; or to communicate with him, and wait his orders. The same Mr. Smith had the general's orders, to convey them to some Spanish officer on the Mississippi. So that they might in fact, suffer death, with as little eclat as possible: "for it was not expedient" to make the matter public.

At the time Owens received the six thousand dollars, there were six thousand three hundred and thirty-three dollars delivered to Captain Collins, also well known in Kentucky, and to Judge Innis, as an agent of General Wilkinson; for whom this money was destined, as appears by his receipt left in the hands of Gilbert Leonard; from whom he received the dollars as *contedor* of the Spanish territory. This sum of six thousand three hundred and thirty-three dollars, was conveyed by sea to New York, and reached Wilkinson in 1795. When, it is worthy of a passing notice, Mr. John Brown, of Kentucky, was on a visit to him. In the same way, will be mentioned the farther sum of six thousand five hundred and ninety dollars, which Wilkinson stated in 1795, to General Adair, had been delivered for him at Orleans; a part of which he had received, and expected the rest. Other money was also sent him by Thomas Power, the notorious Spanish agent.

These facts will shew, that the Spaniards paid for services.

But although Judge Innis would not try the Spaniards who had killed his neighbour Owens, he very obligingly administered on his effects; whereby he got all the papers of the deceased into his hands; of which, he doubtless was as careful, as he had been of the Spaniards, "that they should tell no tales." He also administered on the estate of Montgomery Brown, another of the initiated.

There is one other transaction of the judge, of the year 1794, which is evinced by a letter of his, addressed to "Captain Richard Taylor." See Vol. I. page 311, for its contents.

It is not necessary to suppose, or predicate upon the authority of this letter, either more or less, than the ordinary correspondence which was kept up between the junto, or conspirators, in Kentucky, with the Spanish agents on the Mississippi; who were managing the plot, to baffle the executive of the United States, in its attempt to open the Mississippi, and secure its navigation, by a public treaty; while the expectation was kept up, on both sides of the intrigue, that the people would be induced to commit themselves with Spain. The members of the Democratic society, who were not in the views of the Spanish party, counted upon a general disaffection of the people, and either a change of the president and administration, or an open defiance of the government.

Judge Innis had no pretensions to trade, or commerce; he readily joined those who clamoured against the government, for not obtaining the navigation of the river; and he reminds his confidential friend, that it was to carry an *express*, not a mercantile letter; that he had been to Natchez several times; that he could confide in him; and that he was not to let, even, the application be known; that being in fact, all that had been communicated. The rest could not be trusted to paper, even to his confidential agent.

Nor is it very material, whether the express was to convey intelligence of the victory of General Wayne—the insurrection in Pennsylvania—the prospect of it here—that the militia army was on its march across the mountains—or the catalogue and account of the whole.

Kentucky, freed from the excitement produced by the activity of French intrigue, which was more felt, than understood; now turned her attention upon herself, and her neighbours, of Pennsylvania; and as they progressed in insubordination, so did Kentucky; but at an humble distance, in the rear. By the time, the Pennsylvanians had arrived at arming, against

the government; some of the Kentucky distillers, ventured to black themselves, and assault an exciseman. For some time, it was propagated by the leaders, that the citizens, of the United States could never be brought to take up arms against their fellow citizens, for resisting the obnoxious laws of the general government. And great expectations were excited, and rested, for a while, upon this suggestion. The time now approached, when it was to be put to the test. President Washington, having failed in his admonitory and pacific overtures, to bring the insurgents, with arms in their hands, to a sense of their duty, and submission to the laws; there was no alternative left, but to reduce them by force, or yield the government to anarchy. With him, though not without regret, there was no hesitation. And that voice, which had often been heard in times of public peril, was raised in a call on the militia of the neighbouring states, to repair to the military standard; to support the laws, and suppress insurrection. Never probably, was a call of a similar nature, more promptly obeyed. An army, even more than sufficient, was assembled, and placed under the command of General Henry Lee; a veteran of the revolution, and then governor of Virginia. The march of these citizen soldiers, across the mountains, resolved the problem which had been projected by disaffection to the government, in a manner, appalling to its destined object; and with the happiest effect on the democratic *patriots*, of Kentucky. It had been a motive with the president, for ordering so large a military force, to overawe and subdue the refractory, without bloodshed—and this, he had the pleasure to witness: There was no fighting—but general submission. The government had now passed through a crisis of infinite importance; and proved, that it possessed the attachment of the great body of its citizens, whose intelligence taught them the necessity of supporting its laws; while victorious over its armed enemies, both external, and internal, it had only to guard against those who were covertly at work; and who for the time, were in check, if not overawed, or disconcerted; having kept themselves out of the way, of both gun, and gallows.

The president, in his communications to congress at the opening of the ensuing session, alluding to the democratic societies, as "self-created, societies," ranked them, among the causes of the late insurrection. This, operating like the Ithurian spear, dissipated these Frenchified demons; and put the final blow to their ostensible existence. The party next appeared, under the denomination of "republican;" without any reformation of its principles, or views—hereafter to be further demonstrated.

In the mean time, the legislature of Kentucky held its November session; and passed "An act authorizing persons to relinquish their rights to land." These relinquishments were to the commonwealth; and had the effect to free the party, from the future payment of tax on the land relinquished. An amendment to the constitution of the United States, whereby states were exempted from suit, by individuals, was ratified, on the part of Kentucky, at the same session.

Franklin county was created, to have effect from and after the 10th day of May, 1795: "beginning at the Scott line where it leaves the south fork of Elkhorn; thence a straight line to strike the Kentucky river, and crossing the same one mile above the mouth of Glenn's creek; thence up the same to the mouth of the Cove Spring branch, on the south side thereof; thence up the said branch to the Cove spring; thence west to Washington line; thence with the same down Salt river to the mouth of Crooked creek; thence up the main fork of Crooked creek, to the head thereof; thence with the dividing ridge to the junction of the forks of Benson; thence down the Benson, to where the old wagon road from Boone's old station to Harrodsburgh crosses, at the mouth of the most northwardly fork of Benson; thence a direct line to the mouth of Elkhorn; thence down Kentucky to the mouth thereof; thence up the Ohio to the Scott line; thence with said line to the beginning."

"An act for establishing the Kentucky academy, and incorporating the trustees thereof," passed at this session. Trustees were appointed, and incorporated; with power to fix on a permanent seat for the institution; and hold to them and their

successors, lands, tenements, rents, goods and chattels, which should be given or devised, for the "seminary." They were also to collect subscriptions made for the Transylvania presbytery, and convert such, as were not in cash, to that article.—

\*The president of the said academy shall be a minister of the gospel, of the most approved abilities in literature, and acquaintance in mankind, that may be obtained, and zealously engaged to promote the interest, of real and practical religion."

Other details were inserted; and the whole concluded as follows: "No endeavours shall be used by the president, or other teachers, to influence the mind of any student, to change his religious tenets, or embrace those of a different denomination, any further than is consistent with the general belief of the gospel system, and the practice of vital piety."

"An act for erecting a linen manufactory in Georgetown,\* deserves to be noticed, as one among other premature attempts of the kind. Nothing efficient was done.

Campbell county was created, to have effect from and after the 10th of May, 1795: "beginning on the Ohio at the mouth of Locust creek, on the lower side thereof; thence a direct line to the mouth of the north fork of Licking; thence by a direct line to the mouth of Crooked creek, on the south fork of Licking; thence up said Crooked creek, to the head of the main branch thereof; thence west to the dividing line between the counties of Scott and Woodford; thence along that line to the mouth of Big Bone Lick creek, on the Ohio river; thence up the Ohio to the beginning."

This rapid increase of counties, by a partition of territory, is to be considered as an evidence of the extension of improvements by new settlers, and as evincing an increasing population.

There were other proceedings in this general assembly, which merit attention. Mr. Adair reported, from the committee of the whole on the state of the commonwealth, a preamble and resolutions; which were agreed to by a vote of the house of representatives, twenty-one to five, as follows:

"Whereas it appears to this general assembly, that the commissioner who was appointed by the president of the United

States, in order to be sent to this state, with communications on the subject of the negotiations relative to the navigation of the Mississippi, has not arrived; and probably will not, during the present session: therefore,

*“Resolved,* That the senators in congress be, and they are hereby instructed to require information of the steps which have been taken to obtain the navigation of the Mississippi, and to transmit such information to the executive of this state.

*“Resolved,* That the senators and representatives of this state in congress, be, and they are hereby instructed to use their endeavours to obtain a repeal of the law imposing a duty on distilled spirits.

“And whereas it appears to this general assembly, that it is not only essential to the honour and dignity of the general government, but also to the particular safety of this state, that the western posts, now withheld by the British government, contrary to solemn treaty, should be surrendered to the United States:

*“Resolved,* That the senators of this state in congress, be and they are hereby instructed, if it should not already be obtained, to endeavour to obtain those posts.

*“Resolved,* That we consider it a duty which we owe to ourselves and constituents, to pursue such measures as may have a tendency to preserve mutual harmony, confidence, and good will, between the citizens of this state, and the other component parts of the general government, in every constitutional effort for obtaining and securing to the citizens of this, and other states, their several rights and privileges; and should the peaceable measures pursued by congress for the attainment of the western posts, and the navigation of the Mississippi, fail of success, we consider it the duty of the Kentucky people to use every necessary exertion on their part, in concert with, and to render effectual any other measures, which may be adopted by the general government, for obtaining those interesting objects.

*“Resolved,* That the governor be, and he is hereby required to transmit the foregoing resolutions to the senators and representatives from this state in congress.”—Being sent to the senate, it concurred. They speak for themselves, nor need a comment.

Another resolution, characteristic of recent impressions, is also worthy of insertion. It was recommended to the people who had stills, to enter them for taxation with the proper officer, and to pay the taxes until the law should be repealed!!

A corroboration of the good temper of this assembly towards the general government, is the election of Humphrey Marshall to the senate of the United States, to fill the vacancy occasioned by the expiration of the time of John Edwards, who had drawn out, pursuant to the constitution of the United States. On this occasion, the factions opposed to the administration of the federal government, both French and Spanish, with mortal antipathy to Mr. Marshall's politics, brought John Breckenridge, Esq. then, or recently, president of the Democratic society of Lexington, to oppose him. The majority in favour of Marshall, was but small. And without doubt, that he had the majority, is to be ascribed to the recent success of federal measures, under Generals Wayne and Lee.

At this session, an attempt was made to remove George Muter and Benjamin Sebastian, two of the judges of the court of appeals, from office; by the address of two-thirds of both branches of the general assembly; for an opinion and decree given by them (Caleb Wallace dissenting) in the case of Kenton and McConnell. This was a controversy touching reciprocal claims to the same land, under grants by the commissioners, for settlements and pre-emptions.

A motion had been made by Kenton's counsel, for a rehearing of the cause—two of them stating in writing that there was error in the decree, agreeably to a positive rule, the court was bound to rehear it: so that it was open for further argument and correction; although from the solemn and deliberate manner in which the former decree had been made, there was no reason to expect a change, should the same judges continue to form the court. Soon after the proceedings in court, measures had been taken for publishing the opinion and decree of the majority, and also the arguments of Judge Wallace in support of his dissent; which placed the subject pretty fully before the public; and induced a very general opinion, that the decision



was erroneous as to that particular case; and that it, by consequence, would prostrate a very numerous class of the settlement and pre-emption claims, then considered not only legal, but meritorious. The public mind was, hence, considerably agitated. An address, in the nature of a memorial and remonstrance, to the general assembly, was drawn up, and subscribed; which being presented, brought the subject before the house of representatives. It was taken into consideration—whereupon it was resolved to summon the two judges, of whom complaint was made, to appear; and that a copy of the memorial be annexed to the summons. This being done, and a copy left with each judge, then in Frankfort, they promptly replied by letter, addressed to the speaker of the house; in substance, that they had received the summons, and were in town—that they could find no charge against them that they could or ought to answer—that the legality of an adjudication of the court of appeals, or an opinion of a judge thereof in any cause, could not be properly or constitutionally examinable by a single branch of the legislature: and a formal protest was made against any attempt of a single branch of the general assembly to revise the decisions of the supreme court. They then say, that justice to the judge, and the independence of the court, demand, that they be proceeded against according to the mode of trial prescribed in the constitution. And finally, professing to confide in the candour of the house, and their regard for justice, give assurance that they will hold themselves in readiness to answer any specific charge which may be brought forward against them in the manner the constitution prescribes, at any time whatever.

This letter, bearing date the 19th of December, was presented the same day; and being read, produced a general conviction, that their honours had disobeyed the summons, and did not mean to appear. Some indignation was produced by the conclusion. It being however considered, that their appearance, was a matter of their own concern, and by no means necessary to the constitutional course of proceeding on the part of the house; a preamble and resolution, which had been laid

on the table the 15th, was called up; and are in the following words:

"Whereas it is represented to the present general assembly, that two of the judges of the court of appeals, to wit: George Muter and Benjamin Sebastian, at the last term of said court, did give an opinion and decree, after solemn argument in the case of Kenton and McConnell, &c. that are contrary to the plain letter, intent and meaning of the act entitled "An act for adjusting and settling the titles of claimers to unpatented lands under the present and former government previous to the establishment of the commonwealth's land office." Which said opinion and decree are subversive of the plainest principles of law and justice, and involve in their consequences, the distress and ruin of many of our innocent and meritorious citizens. And whereas the said George Muter and Benjamin Sebastian, who gave the opinion and decree aforesaid, must have done so either from undue influence or want of judgment; as said opinion and decree expressly contravene the decisions of the court of commissioners, who were authorized to adjust and settle titles under the said recited act; and also contradict a former decision of the late supreme court for the district of Kentucky, on a similar point—whence arises a well-grounded apprehension, that the said George Muter and Benjamin Sebastian are altogether destitute of that judgment, integrity and firmness, which are essential in every judge, but more especially in judges of the supreme court: and that there is no security for property, so long as the said George Muter and Benjamin Sebastian continue as judges of the court of appeals.

"And whereas also, the constitution provides that for any reasonable cause which shall not be sufficient ground for impeachment, the governor may remove any judge of a superior or inferior court, on the address of two-thirds of each branch of the legislature—and the legislature deeming the before-recited case proper for their interposition and address:—Therefore,

."Resolved, That the said George Muter and Benjamin Sebastian ought respectively to be removed from their office of judge

of the court of appeals; and that a committee from each branch of the legislature be appointed, and join to prepare an address to the governor for that purpose."

Upon this being put to vote, it passed in the negative, by a majority of three votes.

The subject being, nevertheless, resumed in the senate, the following resolution was passed in the affirmative by a majority of one:

*"Resolved, That it is the opinion of this house that the judges, Muter and Sebastian, in the case of Kenton vs. McConnell, have given a decision contrary to the plain meaning and intent of the law; that their decision if established will contravene the purpose of the legislature of Virginia in establishing a board of commissioners to grant settlement rights to certain settlers, in the western country, and that it will do injustice to many of the first settlers in this country; which decision we believe, from what appears at this time, proceeded from a want of a proper knowledge of the law, or some impure motives, that appear to discover a want of integrity."*

On this resolution's being sent to the house of representatives, it was considered; and being put to the vote, it passed in the affirmative, by a majority of three. But the constitution requiring concurring majorities of *two-thirds* in each house, to carry an address, it failed. While the two judges, left safe in their office, should have borne the recent escape with a dignified silence. They however, made a clamorous *appeal to the people*, in a pamphlet of about thirty pages, in which they displayed a want of candour, as well as of prudence; censured the legislature in general; and personally abused some few members, who had been active against them.

But to what purpose appeal to the people? unless it was with a view to the next election, and that they should leave out such as had censured them, and elect such as would applaud them, at the next session. Upon the whole, it seems that the conduct of these men demonstrated as many errors, and as much weakness, as could well be crowded into so short a transaction. The best exculpatory defence which they prob-

bly could have made against the charge of want of integrity, would have been the admission of the influence of Colonel Nicholas, who was attorney for McConnell; and which had indeed, become proverbial. However, at the next spring term, Muter joined Wallace, when the former decree was set aside; and one in the direct reverse, substituted in its place: Sebastian, as it was said, "stiffly holding to his iniquity." His error was however thought apparent. It will be set forth, in the following brief narrative.

Upon inquiring into the facts, it was ascertained, that the conflicting claims to the land as adjudged to the parties, by the commissioners, did not at all interfere—that the conflict had been produced by McConnell's surveying his claim, out of his own location, upon that of Kenton—and that having the elder patent for the land, he would hold it, unless Kenton could establish his prior equity: and which depended on the legality of his grant of right, by the commissioners. If the court would open it for *reinvestigation*, as well as on the goodness of his location, he incurred a double risk. But his location was good; and that reduced his adversary to the other point. The commissioners' grant was therefore attacked; and the court, (Wallace excepted,) permitted it to be opened, for *rejudication*; contrary to a former decision of the old supreme court, in a similar case. This point being gained for McConnell, it was contended, that the judgment of the commissioners was erroneous; for that Kenton, upon the face of his certificate, from that court, was not by law, entitled to a settlement, and pre-emption: and hence, that his claim was illegal, in its foundation. This was also conceded by the court; and made the basis of their decree: with what propriety, will appear after seeing the law, and the certificate of the court of commissioners. It will be recollected, that under the law as already stated, there were two species of settlement rights—one called an *actual settlement*, the other a *village settlement*: as to both without distinction, the law declared "that no family shall be entitled to the allowance granted to settlers by this act, unless they have made a crop of corn in that country, or resided

there at least one year, since the time of their settlement. In the case before the court, both the claims were "village rights"—McConnell's had been granted, "for raising a crop of corn in the country;" Kenton's "for at least one year's residence in the country; *being from 1775 to 1779.*" As applicable to these premises, the following quotation is made from the opinion of the court: "That the court of commissioners, was a court of a special and limited jurisdiction; that they have exceeded their power, in granting settlements, and pre-emptions, *for residence*; and that such certificates may be set aside at any subsequent time; and therefore a certificate, which on the face of it appears to have been given for services, for which the law did not authorize a certificate to be granted, must be void; because the commissioners, from their own shewing, have exceeded their jurisdiction; and as far as they have done so, their judgment can never be opposed to a *legal right.*" Hence affirming, by their decree, that McConnell's was a legal right, as it was *for raising a crop of corn in the country*: while Kenton's was illegal, because it had been granted *for residence*: although, as already seen, the law had placed the two kinds of claim, on the most perfect footing of equality. Not forgetting, that the meritorious cause of both, was a *settlement in the country*; about which there was no controversy; the certificate to Kenton, was prior to that to McConnell; and each expressed "that the land claimed and granted, had been improved."

So much for the merits of the conflicting claims—which could but make a part of the inquiry by the house of representatives, who took up the case on the record, in order to be informed whether an error, or no error, had been committed by the accused judges; and by which they were to be governed in their vote on the resolution.

And now, after the lapse of nearly thirty years, and the most dispassionate review, there is no material error perceived in the procedure of the house; unless it was in taking up the resolution of the senate, which it was known had not passed by the competent majority for an address, and could only amount to a censure at most, without affecting the office of the judges.

But certainly, it violated no constitutional right; and was a matter of expediency only, whether the house would reprehend or not, the judges, who were left in office. The effect of the censure is believed, to have been salutary. For it is quite probable, that but for this, the settlements, and appendant pre-emptions, to a great extent, would have been destroyed by subsequent entries on treasury warrants. The doctrine however, subsequently established in the court was "that to the extent of the commissioners' certificate, their judgment was final; and not to be opened." A point of the utmost importance.

That the house of representatives, possessed the constitutional right to institute the inquiry, and call on the accused judges, to appear, and answer, if they chose, there can be no doubt. That their contumacy could not arrest the proceeding, seems quite as clear: and also that the contempt might have been punished.

That the resolution on which the house acted, the 19th of December, presented in due form the grounds of the proposed removal, by an address, cannot be denied—that it was intended to have moved for a summons on it, is probable, had not the letter of the accused judges, put the house at defiance—and shewn that they did not mean to appear to defend their decrees, or judicial opinions; which clearly exempted the house from exposing itself to a repetition of the recent insult, or else laid it under the necessity, of punishing it. They preferred the first, and proceeded. But if they could not proceed without the presence of the accused, then they should have been attached, and brought up in custody: otherwise their honours could defeat an inquiry into their conduct—produce a failure of jurisdiction, founded on clear constitutional provision; and justice itself, not be administered, though urgently demanded.

To bring this case to a close, it will be remarked, that corruption is by no means a necessary ingredient in the charge against a judge, in order to his removal from office. There are many ways of committing a "breach of good behaviour." But was corruption a necessary part of the charge, it might

often be sustained, on a proper investigation of the record on which the opinion and decree, were rendered. Indeed, what judge calls witnesses, to bribery, or other acts of direct corruption? And in the absence of other proof, could not his judgments, opinions, or decrees, be resorted to, for the purpose of fixing guilt, or ascertaining *misbehaviour*, he must be a weak judge indeed, who could not perpetuate himself in office; under the practice of malfeazance. And yet, weaker still, would be, that community, which would countenance such a doctrine of judicial impunity and exemption. No: official acts, are certainly among those for which a judge may be removed from office, and therefore among those over which the removing power, has jurisdiction. His opinions and decisions may be evidence against the judge himself. This power, like others may be abused; but that is no argument against its proper use. The constitutional guard of *two-thirds* required to remove, affords every reasonable security against any capricious resort to its exercise by a majority; or would defeat such resort.

Forty laws were made at this session—nine of them concerning towns—of the rest not yet noticed, some were of a general nature; others personal, or local.

The receipts at the treasury, for the year, were six thousand two hundred and seventy-one pounds, seventeen shillings and two pence half-penny. The disbursements for the same time, were five thousand, four hundred and twenty-seven pounds, one shilling and nine pence half-penny.

## CHAP. IV.

*Proceedings of the Legislature—How far the Legislature can increase or reduce the rights of eligibility to a seat in its own body—Quarter Session Justices, their seats as members vacated—Governor communicated Colonel James Innis's correspondence—An attempt to instruct a Senator of the United States by name—Privilege regulated—Commissioners to settle State line with Virginia, confer, disagree, &c.—Measures taken with Green River lands, &c.—Speaker chosen by ballot—Motion for a law to refer the question of calling a Convention to the people, &c. &c.*

[1795.] THE other incidents of the year 1795, being connected with military occurrences, and already mentioned; the proceedings of the legislature will receive the next attention.

The first act to be noticed is one entitled "An act to disqualify sheriffs from holding a seat in either branch of the legislature for a certain time."

The preamble of the act suggests, that great mischief may arise to the people from an admission of improper persons into the legislature; for remedy whereof, sheriffs, and deputy sheriffs, are declared ineligible to a seat in either house, until they shall have made their collections of the public revenue, paid them into the treasury, and obtained a quietus from the auditor; nor for one year afterwards.

This act suggests an extraordinary state of things; the sheriffs were elected, to their office by the people—of course they were popular; they had the collection of the public revenue; could retain their popularity, by indulging the people—become delinquent—and then get into the legislature, where they could pass laws to indulge themselves, with further time to make the collections. Necessary as the law was, to guard the good people against a violation of their constitution, in electing the same man to incompatible offices; yet it may be doubted if their representatives did not commit a breach of the same instrument, in extending the ineligibility, to the end of a year



after the quietus was obtained; especially, if there was any case, where no delinquency had occurred, or probably would occur, in not excepting it from the general inhibition.

At this session, an abuse of the kind above intended to be guarded against, committed also by the people upon the constitution, in choosing quarter session justices to seats in the legislature, was recognised, and checked, by declaring them ineligible, and actually vacating the seats of those who were returned to the house of representatives: to wit—Henry Crist, from Nelson county; Young Ewing, from Logan; Mathew Walton, from Washington; William Casey, from Green; Walker Baylor, and James Davis, from Lincoln; John Miller and James French, from Madison; Robert Rankin, from Mason; Joseph Crockett, and John McDowell, from Fayette; and Richard Young, from Woodford. These were all quarter session judges, called “justices” at the time they were elected, and then; who nevertheless very conscientiously took their seats, after in effect swearing to support the constitution; which expressly separated the legislative, from the judicial power, and declared that they should not be exercised by the same persons; and moreover excluded from the legislative body, all those who held an office of profit: meaning no doubt, an office, whose compensation was to be fixed, or varied by law.

The seat of John Greg, sheriff of Bourbon, was also vacated, at the same session.

The governor communicated to the general assembly, his correspondence with the special messenger of the president, Col. James Innis, destined to convey intelligence to the legislature of Kentucky, on the subject of the navigation of the Mississippi, then in negotiation with the court of Spain. It appeared that this correspondence had taken place in the preceding January, soon after the adjournment of the body for which it was intended; it disclosed information, and gave assurances on the part of the president, which had they been delivered as he intended, would in all probability, have been satisfactory; at least, to the intelligent and well disposed part of the community; but which till now had been withheld from the public.

They shewed, that due attention had been paid to the object of negotiation—that the delay was produced on the part of Spain—but that it would still be pursued unremittedly until attained, or the negotiation, interrupted, from a conviction, that the navigation in question was not to be obtained in that way. It is to be acknowledged, that the president had been unfortunate in the appointment of his commissioner, or messenger. The gentleman's mental qualifications, it is true, were ample; but his corporeal magnitude, so far exceeded them, as to render him almost useless. His corpulency, was only exceeded by his indolence. While his locomotions, might aptly enough be compared, to the animal in Natural History, called the slow, or slow-peter. From an early part of the summer 1794, until 1795, had he suspended these communications: thereby defeating the benevolent intentions of the president; who desired to content the people, by giving them direct evidence that their interests had not been neglected; although it had been often asserted by men who had sinister purposes to accomplish.

The appointment of Colonel Innis was untoward in another important point of view. It has been seen that his brother, Judge Innis, resided in the neighbourhood of Frankfort, and that he was party and privy to the intrigue with Spain; which without doubt, was the principal, if not then the sole cause of the difficulties that were opposed by the Spanish minister to the success of the existing negotiation. With him the colonel took up his winter quarters; where he remained, as if spell-bound, until he commenced his return home: from him he received his information of the state of public opinion, and the cause of complaint, &c. So that if it was a part of his mission to ascertain these matters, which seems reasonable to suppose, it may be inferred, that he had been misled, as to each: and that to the same extent he in his turn, misinformed the president, on these topics. Thus was the utility of the appointment rendered useless, or mischievous, by the manner in which the officer executed his duties.

It was attempted at this session to instruct Mr. Marshall, one of the senators from the state in the congress of the United States, personally how to vote in future on the subject of the treaty recently formed with Great Britain, and called "Jay's treaty," for the conditional ratification of which he had voted the preceding June: his colleague who voted against it, requiring no instruction. After debate, however, the resolution was amended, so as to make it read "senators;" who were charged to vote against the treaty in all subsequent stages of its appearance. This instruction, was eventually rendered inoperative by the British government, who at once acceded to the modification proposed by the senate; and thereby took from the president the necessity of laying the subject, again before that body. Which saved the erratic senator, from another offence: For certain it is, that with the impressions, under the influence of which, he acted, he should have disobeyed the instruction. The subject was one of no local character, but general to the United States—of which he was a senator. But peace, was of infinite importance to Kentucky, as well as to the United States: the treaty was of a nature to ensure it, to both. Free of the Indian war, and of her embarrassments with Britain, the federal government could attend to Spain, and to the factions within her own bosom, with an undivided observation. And notwithstanding this untrained senator, had heard an argument from his colleague, the burthen of which was to prove, that should the treaty be executed, and the posts on the lakes put into the possession of the United States, that nevertheless the British would still control the Indians, and keep them at war with the frontiers: so that even Kentucky could gain nothing in fact; while the United States made concessions, in giving up her negro claim, &c. for which they would get nothing, &c. All of which seemed so much like prejudice, party spirit, and folly, as to be ascribed to them; without in the least, moving the judgment toward a change. While the instruction, being a peremptory mandate, without any argument, was still as little calculated to have that effect. In vain,

therefore, were they addressed to one who acted on his own convictions, without interposing calculations of popularity, in the line of his understanding of his duty, and how to discharge it.

The ratification of the treaty, was indeed a sore blow to the *French faction* throughout the United States; and to both that and the Spanish intrigue, in Kentucky. Where, exasperated against their senator, his colleague Mr. Brown, even thought himself justified in saying, publicly, in the idiom of the nation he then subserved, that "he ought to be *decapitated*."

To counteract the enthusiasm, folly, and misrepresentations which circulated in newspapers, for there were then two in Lexington, the offending senator wrote a series of explanations of the treaty, in a style both decorous and temperate, which he signed with his own name, and offered to be printed, as articles of useful public intelligence; but which were refused publication by one editor: the other agreeing, on application, to print them, if he was paid; and actually charged, and was paid for printing them, as for articles of a private nature.

The treaty being ratified by the president, to prevent which the most strenuous efforts were made; the next thing with the faction, was to commit the good faith of the nation, by inducing a refusal on the part of congress, to appropriate money, to carry it into execution. In this, they were also defeated, as will hereafter appear.

In the mean time, the course of Kentucky legislation will be resumed.

There having been some controversy about the privileges of the houses of the legislature, of a highly important kind, it was deemed expedient at this session to adjust it by positive law. The main question was, whether each branch of the general assembly possessed the right by its own resolution to compel the attendance of persons, the production of papers, &c. Which being asserted on the one side as a right inherent in the body, was denied on the other. In support of the negative, it was said, or might have been said, that ours is a government of law; that if the legislative branches have privileges, so have

the citizens; that when they come into contact, the law alone must decide between them; that nothing but the acts recognised by, or emanated from, the constitution in the manner prescribed thereby, as the supreme law, can bind the freemen of this commonwealth to obedience; that the power of making laws does not reside in either branch of the legislature, but in the two, acting concurrently; that were not this the case, we have two legislatures instead of one, either of which could pass acts to bind the citizens, and thus deprive them of the benefits expected to be derived from a division of the legislative body, and of the reciprocal negative bestowed on each as checks on the improper projects of the other; that in fine, the two houses might pass contradictory resolutions, implying an absurdity in legislation.

These, or other reasons, were satisfactory to a majority; and a well digested act passed in conformity to them: which remains unaltered.

Franklin academy was authorized by an act of this session. This institution was located in the town of Washington, Mason county. It looked to private patronage for its support: that not having been liberal, it languishes.

"An act to establish district courts," may be considered as growing out of the abolition of the original jurisdiction of the court of appeals. The act established six district courts: to be holden at Bardstown, Frankfort, Washington, Paris, Lexington and Danville. Among which the several counties of the commonwealth, were divided. These courts were invested with the original jurisdiction of the court of appeals, the jurisdiction of the court of oyer and terminer, and concurrent jurisdiction in many cases with the courts of quarter sessions. Six judges were to be appointed: any two of whom, agreeably to an allotment annually among themselves, were to hold a term, spring and fall, in each district. All powers deemed requisite, were given to them. The details of which fill twenty-two pages of close print in large octavo.

This act was amended in the next session, and besides erect-

ing a general court to be held by some three of the same judges twice a year in Frankfort, the subject matters of their jurisdiction was distributed into four new acts: one to regulate the proceedings at common law; a second, to prescribe rules for chancery proceedings; a third, arranging the method of conducting criminal prosecutions; and the fourth, relative to proceedings against absent defendants in the courts of chancery: leaving nevertheless, various parts of the original act in force.

At the January session 1798, another act was passed "to reduce into one the several acts concerning district courts in this commonwealth:" And this amendatory act was itself amended in the November session of the same year. To enter into particulars, would be labour lost; as no utility could result from the detail. The facts stated, will evince the incautious and defective manner with which the most important laws, those relative to the courts and the administration of justice, were composed and passed; or else a restlessness, and love of change, incident to mankind in certain circumstances, and characteristic of the ruling power, in the government. To close these remarks, suffice it to say, and this is said on account of the connexion in the subject, that in the winter session 1802, both the district and quartersession courts were abolished; and circuit courts established, in their stead: without the least regard to the judges of the annihilated courts; who like those of the court of oyer and terminer, were thus put out of office: their commissions during good behaviour, to the contrary notwithstanding. But more of these subjects hereafter.

Among the acts of 1795, one authorizing arbitrations should not pass unnoticed. This act gave persons having any controversy, a right to nominate others as arbitrators, and to make a statement of their case in writing; which they might present to *any court of record*, where the whole was to be entered; and the clerk ordered to certify it to the persons named as arbitrators; who were hence authorized to subpoena witnesses to attend them, which process was to be executed by the sheriff, or a constable. The arbitrators were to be sworn, to decide the matters submitted to them, according to law and equity.

They were required to furnish each party with a copy of their decision, return another to the court, which was to be recorded, and put a final end to the controversy: subject to an appeal for partiality, or corruption.

These arbitrators were allowed nine shillings per day, while attending on the business; being also charged to do it with despatch.

Thus was introduced into the judicial department, an irresponsible tribunal; and thus by a side wind, and under the specious pretence of expediting and cheapening the administration of justice, was the trial by jury dispensed with; and a door thrown open by law, for every species of irregularity. That persons who chose to do so, could call in arbitrators, or umpires, to settle their controversies, was never questioned, any more than that they could settle them without either. This was a right not derived from the constitution, nor put under its prohibition or control. But the constitution had vested the judicial power of the government in courts, whose judges were to be commissioned during good behaviour, and rendered amenable for their conduct, &c. Did these arbitrating courts fulfil the provisions of the constitution? Certainly not: although in the subsequent constitution, a clause is found, which authorizes such an anomaly.

It being represented to this assembly, that different persons holding land warrants from the state of Virginia, were encroaching on the territorial rights of this state, by making surveys within the same, under colour of such warrants; it was therefore judged expedient, in order to put an end to the intrusion, to ascertain and fix the line of the Cumberland mountain, about which there remained some uncertainty, and where the mischief was supposed to exist: to this end an act was passed, authorizing the governor to open a correspondence with the governor of Virginia on the subject; and if he thought it necessary, to appoint three commissioners—and do whatever else was deemed proper, to fix and establish the line of boundary between the two states, permanently. This correspondence being accordingly commenced, was reciprocated by the gover-

nor of Virginia, and three commissioners appointed on each side, namely: Archibald Stewart, Joseph Martin, and Creéd Taylor, on the part of Virginia; on that of Kentucky, John Coburn, Robert Johnson, and Buckner Thruston; who having made several previous attempts, which proved abortive, met in the month of October, 1799, and concluded a convention at the forks of Great Sandy river; which was subsequently ratified by their respective states: whereby the line between the two, was determined, and run from the boundary line of North Carolina, then Tennessee, along the top of Cumberland mountain, northeastwardly, keeping the highest part of the mountain, between the head waters of Cumberland and the Kentucky rivers, on the west side thereof, and the head waters of Powell's river, Guest's river, and the Pond fork of Sandy, on the east side thereof; continuing along the top of said mountain, crossing the road leading over the same, at the Little Paint gap, where, by some, it is called the Hollow mountain, and where it terminates at the west fork of Sandy, commonly called Russell's fork; thence with a line to be run north forty-five east, until it intersects the other great, and principal branch of Sandy, commonly called the northeastwardly branch; thence down the same to its junction with the main west branch; and down Main Sandy to its confluence with the Ohio. It was also further agreed, in order to quiet the claims to lands, on the one side and the other, "that all entries made in the surveyors' offices of either state, should be as valid as if made within the state owning the lands." Thus was put to rest, this delicate subject of state boundary, so far as it could be, without the sanction of congress—which if it was asked, has been obtained; and if not asked, should yet be done, without further delay. Should it ever be necessary to fortify this boundary, the possession of the gaps will be a primary object. May that time be distant.

The vacant lands of the commonwealth, south of Green river, were taken into consideration, and an act passed to dispose of them, at this session. This became the basis of a new system of legislation, somewhat singular in its character; and



still in its development, successively evolving features more and more extraordinary. The subject is worthy of attention, both as it was the source of considerable revenue, badly managed, and the cause of unfolding much of the genius of the constitution, and governing portion, of "the people."

The act of 1795 provides for the settlers on vacant land; secures to each housekeeper two hundred acres, by giving such a pre-emptive right. Commissioners were to decide on claims; to consummate rights, rules were borrowed from the laws of Virginia. Thirty dollars per hundred acres, was the price to be paid; and in that proportion for more or less than one hundred; the fee simple to be withheld until the money was paid. A great number of claims were made, and allowed, on easy proof. Hence a numerous population was rapidly drawn into that section of country; as the possession of the land was admitted, while the payment for it was suspended; and tracts to be had, worth from two to four dollars per acre, for thirty cents, on credit. Speculations of various kinds ensued.

In 1797 another act passed on the same subject, and still further to encourage settlers. This act allowed from one to two hundred acres to those who should settle before the 1st of July, 1798; reside one year, and tend two acres in corn, with a fence. The price for first rate land was sixty dollars per hundred acres; for second rate forty dollars per hundred acres. This difference was easily managed: there was no first rate. Three commissioners were to be appointed, as before, to adjudicate claims, and if allowed, to grant certificates. Entries, surveys, and patents, were required to consummate the title. The land to be forfeited, if the price was not paid within a year from the date of the commissioners' certificate. Numerous claims were also allowed under this act. The act gave further time to claimants under the first law to pay for their lands, and avoid the forfeiture. Thus already commenced the system of indulgence, and *relief*, in this class of cases.

At the January session of 1798 an act was passed to amend the act of the preceding year. In the November session of 1798 a law was made allowing the settlers south of Green

river to pay for their land "in four equal annual instalments," with lawful interest: except those who claimed under the first act, and they were indulged with six months' credit from the passage of the law. This act was amended in 1799; and eleven days after, it was supplemented with a new act. At the same session an act to prevent locations on the lands of actual settlers, passed.

In 1800 an act granting relief to actual settlers south of Green river, passed; and nine days subsequently, the last act was amended. By a third act of the same session, the lands of the commonwealth were to be improved. The first of these acts indulged all those who claimed land south of Green river, with the permission to pay for them in *nine years*, by equal instalments of the price; being either thirty or forty dollars the hundred acres, with *five* per cent interest. To which were added various other indulgences. By this time, and indeed before, it may be said from the first indulgence granted, the whole southern section of the state were united in expecting indulgences. No man could be elected to the legislature from that quarter, unless he was an advocate for RELIEF. There was hence a perfect understanding, and union of sentiment, among the "Green River band" in the general assembly; and it had become formidable in that body, by its numbers as well as its union. Its votes were for barter and exchange—"You vote for my law; we want indulgence, we want something done for Green river; and we will vote for yours:" caring, in fact, but little what it was. The bargain, "you help me, and I will help you," was held to be a fair one; and became quite common, and notorious, under the denomination of "log rolling"—alluding to an agricultural practice of exchanging help to each other among neighbours, for the purpose of clearing the logs off the new land, about to be reduced into cultivation.

An act of the same session, "for settling and improving the vacant lands of the commonwealth," allowed to all persons over eighteen years of age, the right to acquire land to the amount of four hundred acres, at the price of twenty dollars per hundred acres, to include the settlement; which was to be

made before the claim was allowed. The county courts were now vested with the power of granting the claims, as commissioners formerly had been in like cases. Limitations were prescribed within which claims were to be presented, entered, surveyed, &c.; subject to forfeiture in case of failure. New scenes of fraud and speculation were now opened. The courts received the claims with great latitude, and allowed them with little scrutiny. Twenty dollars per hundred, rendered them a subject of ready sale, and they were allowed to fictitious claimants; such as, John Pothooks, Thomas Fryingpan, Jonas Tonga, &c.; while proof was dispensed with, or perjury committed, without reprehension. Forgeries followed, and most of such grants got into the hands of assignees.

This act was amended in 1801, so as to permit persons who had settled on tracts of two hundred acres, to have preference of those who claimed four hundred acres; and further, allowing patents to issue as soon as surveys were made.

In 1802, "An act for the relief of settlers," allowed such as had by mistake settled on military land and paid for the whole or only a part, to have as much elsewhere as they lost. It also permitted claimants to take less than the quantity first allowed, at the same price.

The year 1803 produced another act giving further indulgence to the settlers on vacant lands in the state: whereby all monies due, or to become due under the act for settling and improving the vacant lands of the commonwealth, or any act amendatory thereto, shall be paid by equal annual instalments on or before the 1st of November, 1810. For money then due, the first payment was to be made the 1st of November, 1804; the rest to follow, and bear six per cent yearly interest: with various other regulations as to other points.

In 1804, the county courts having continued to grant claims, it was announced, that in many instances they had allowed claims for lands that had been previously granted; and an act was made for the *relief* of such claimants.

In 1805, the auditor of public accounts was called on by law to furnish a statement, detailing the instalments, &c. This act

also limited the power of the courts to grant certificates for settlement, or other rights, to the 1st of March, 1806.

In the same year, an act passed to extend the time of granting certificates by the courts; a second, for the relief of settlers in certain cases; and a third, for the payment of the debt due the commonwealth for the sale of vacant land. This act placed the debts due for such land, or to become due, in fund; and put it on twelve yearly instalments, of principal and interest; the first payment to be made, on or before the 1st of December, 1807.

So much in connexion; that the spirit of legislation on the subject, might be seen, and if practicable, duly appreciated. Minute details, and local regulations, not coming within the design of this work, have been omitted;—intending only to exhibit general traits of character, as emanating from the public mind, which are evidenced by the legal code, to which resort is had, as to the best possible evidence, on all subjects, coming within its pages. And although this series of legislation will not be further pursued, let it not be imagined that the legislature have ceased its indulgence, or the Green River people ceased to want *relief*; for hardly a session passes, without one or more act or acts on the subject: while the "Green River debt," is a cant phrase. Nevertheless, there have been paid into the public treasury, previous to this time, something like seven hundred thousand dollars, on account of vacant lands.

Nor should the fact be suppressed, that an effect as invariable as the cause, fed by local and personal interests, having their focus south of Green river, has been an uniform co-operation of the representation from that section, on all legislative measures concerning themselves. Pernicious as the ramified consequences of such a legislative corps may be, upon the general legislation of the state, some of which have already been shewn; while many others may easily be conceived, even in the elections which often take place in that body; and much as such a state of things is to be deprecated, yet it is not intended to make any personal inferences from the premises,

or to say that other men placed in their situations, would have acted otherwise than they have done.

What in fact is the popular principle every where avowed, and now established into a creed, by both the representative and his constituents? Why, that they are his *master*, and he their *servant*; a mere local agent, bound by instructions from those who elect him, on all subjects, local, or general. These instructions may indeed, be generally avoided, by pledges to study, and be subservient to, the *will of the majority* of the county. To the inconsiderate, the indolent, and the embarrassed portion of mankind, nothing seems so desirable as indulgence; give it but the name of *relief*, and it becomes fascinating: not only to the Green River people, but to such as have been described, universally. While they make a most formidable phalanx at elections throughout the state: and *relief laws* characterize our legislation.

In the session of 1795, to which the narrative is connected, and now returns, from the late pursuit of Green River policy; Robert Breckenridge, who had hitherto been the speaker of the house of representatives, no longer presented himself; while John Adair, Richard Young, Edmund Bullock, Joseph Crockett, and Thomas T. Daveiss, were candidates. After several ballots, dropping successively the hindmost man, Bullock and Daveiss came out tied, or with an equal number of votes: the choice by lot was resorted to, and terminated in favour of Bullock.

At this session, it was made a matter of complaint, that six years was a term too long for senators of the United States to continue in office; and a memorial on this subject, was referred, but never came to maturity.

It was also proposed to pass a law, for opening a poll at the election in the ensuing year, for the purpose of taking the sense of the people, for and against calling a convention to revise the constitution. The senate had rejected a bill concerning occupying claimants, which had been passed by the house of representatives, at the preceding session; and being popular, its rejection had produced some irritation against that branch

of the legislature; which was thought by some, to be too independent of the people; and now openly charged with being ARISTOCRATIC, and careless of the will or wishes of the majority of the country. This last idea, undoubtedly had reference to the vote of the senate, on the bill to which allusion has been made; and which by addresses from several parts of the state then on the table, appeared to be popular, and was pressed on the future attention of the legislature, with renewed warmth.

Thus early was the jealous, if not jaundiced, eyes of the democracy turned upon the senate, when it was found to possess some independence; and to answer the purpose for which it was intended—"a check upon the house of representatives." The cry of ARISTOCRACY, was hence repeated, got into the public prints, and spread throughout the country, with a malign effect. For certainly there was no one property of a PRIVILEGED ORDER, that being the meaning in which the appellation was taken, about the constitution of the senate. If it was filled by men of more age, experience, and wisdom, or possessing more property, than those of the house of representatives, it was certain that they did not derive either from their official situation, but carried them into it. If they were properties of *aristocracy*, it was that kind of "natural aristocracy" which is the result of the inequality of men; and ever to be found in every civilized society, where industry is protected, labour rewarded, and property secured, to its rightful owner. It is true, that in the order of nature, democracy precedes aristocracy; as nakedness precedes clothing, and ignorance is before the improvement of the mind, or the acquisition of riches. Admitting the fact, which none can deny, that all come into the world equally, and really, ignorant, and naked; and taking this as the basis of democracy; yet it is not perceived to confer any peculiar merit, or to give any exclusive privilege; for the aristocrat, may boast an equal origin, and assert an equal claim, to primeval ignorance, and nakedness. What then is the real source, and true foundation of democratic merit? It is, that the greater portion of mankind continue nearer their original state of nakedness, and ignorance; while

the smaller portion depart from it, in the line of improvement and acquisition, intellectual and circumstantial: so that those who pass a certain point in this progress of augmentation, are called rich, or learned, or wise, beyond the attainments of the multitude; and hence become "aristocrats"—That is, objects of envy, jealousy, hatred, and abuse, to the *virtuous* leaders of the "democracy;" of whom they want to make ladders, on which to climb, over the heads of the *aristocracy*! And such is the *material* to work on, that it is often done.

The senate of Kentucky, so stigmatized, derived notwithstanding *all* its rights, powers, and privileges, through the medium of the constitution from the democracy of the country, always the majority; and here, let in to vote at elections, without qualification, other than residence, and full age. At the end of four years, this dreadful aristocratic body became totally extinct; again, to be composed of new members, taken from the general mass, by electors, chosen by the democracy: who soon gave proofs, hereafter to be noticed, not only of its jealousy, but of its power.

A bill passed the senate, for selling the vacant lands south of Green river, to Elisha J. Hall and company, for seventy-five thousand pounds; equal to two hundred and fifty thousand dollars, to be paid by instalments, of short periods; which was rejected by the house of representatives, nineteen to thirteen.

In fact, but little was known of the quantity or quality of these lands by the members in general; who probably supposed that all the most valuable parts had been taken by the military locations: although it was otherwise, as proved by after experience.

There were received into the public treasury for this year, eight thousand eight hundred and eleven pounds, five shillings and one penny. For the same period, there was paid out, seven thousand six hundred and forty pounds, sixteen shillings and eight pence. On counting the cash, there was found thirty three pounds, in cash, and certificates—deficiency, eleven hundred and seventy pounds, eight shillings, and five pence. This was afterwards, satisfactorily accounted for: upon correcting the accounts, by the vouchers.

"An act concerning the trustees of the Transylvania seminary," suspends their powers during the session of the general assembly. Another act, "concerning the Transylvania seminary," puts the institution under the control of the Lexington district court, for certain purposes.

It was enacted that the auditor, treasurer, and secretary, should after the first day of the ensuing April, reside in Frankfort, and there keep their respective offices. That in addition to their present salaries, the treasurer, and auditor, should each receive eighty pounds annually. And further, that the governor next to be elected, should receive one hundred pounds yearly in addition to the salary then allowed by law.

The governor, was allowed to place certain guards on the wilderness road.

Representation was apportioned among the several counties.

The wages of members of the general assembly, were raised from six, to nine shillings, per day.

At this session, there were upwards of fifty new laws made; about fifteen of them on private subjects. Among these is to be particularly noticed, one allowing of the divorce of Margaret, from her husband, James Richardson; whom she alleged had left her, and gone to the Spanish territory. She might sue in any county court, and on establishing the facts by a jury, that her husband had left her and become a Spanish subject, she was to be divorced.

Of a different character was one, to pay for the scalps of wolves, killed; another, to compel every free male over sixteen years of age to kill a certain number of crows, and squirrels. The subjects of bastardy, strays, and vagrants, each underwent legislative revision. Others for conveying lands, regulating towns, legalizing erroneous proceedings, giving further time to improve town lots, &c. are but adverted to as characteristic specimens, of the general course of legislation. At the close of the session, the governor, and general assembly, exchanged valedictories; expecting no more to meet officially, as the general election was to take place, 1796, previous to another session.



But it occurs, to place among the transactions of this year, some account of the treaty with Spain, whereby the controverted boundary was settled to run from the Mississippi on the northern extremity of the thirty-first degree of north latitude, east &c.; and a free port, for the citizens of the United States, opened at New Orleans; contrary to the predictions of Mr. Brown; and to the great disappointment, and chagrin, of the Spanish party in Kentucky. Who had in this year deputed Mr. Sebastian to make a treaty of the commercial kind, with the agents of Spain on the Mississippi; and which had received its form, when the treaty, made at Madrid, with the United States, was announced. This being ratified by the respective governments, superseded that clandestinely made by Sebastian; and for a while caused these intriguers, among whose names were seen those of George Nicholas, and William Murry, to pause; in order to see whether, or not, it would be executed, on the part of his Catholic Majesty. From this time Sebastian was the pensioner of Spain, at the rate of two thousand dollars a year.

Inasmuch however, as these subjects will again be mentioned, the evidence of the facts will be withheld, for the full development of the project, in due order of time.

## CHAP. V.

*State of the Country—Treaties with England and Spain—Parties—Elections for Governor, &c.—Garrard—his Speech to the Legislature—New Counties made—Other acts—One to establish a Court of Appeals—Breach with France—Jefferson's Letter to Mazze—1797—Adams, President; his conduct in relation to France; February Session—Act concerning Occupying Claimants—and other acts—A disquisition on some points of Government &c.—Overtures, to Spanish Partisans, to sever the Union—Proceedings and result—November Session—Proceedings, acts, &c.*

[1796.] In the year 1796, Kentucky found herself in a state of profound peace with all her neighbours, but considerably agitated, by her own internal commotions. Neither the treaty with Great Britain, nor that with Spain, had yet been carried into effect. The French, or Jefferson party, in the United States, opposed the appropriations, necessary to effectuate the treaty with England; without which, there must have been a breach of faith, and a new cause of war, the thing they aimed at creating, added to the old ones; which they doubted not would effect their purpose, and of which they were tenacious. Their influence in congress, had by this time become so great, that the appropriation, was for a time suspended; and even rendered doubtful. The same party, was however willing to see the treaty with Spain, carried into execution, and readily passed an appropriation for that object. It was sent to the senate, and there suspended, on an informal understanding among the majority, that until the house of representatives passed the bill for the appropriation in aid of the treaty with Britain, they would not pass the bill, in favour of the Spanish treaty: determined that both should share the same fate. And moreover, that the responsibility should fall on the party, who had projected the violation of the public faith, pledged in the exact terms of the constitution by the treaty making power. When the determination of the senate came to be known,

though extending only to a part of those who had advised the ratification of the treaty—the *republicans* of the house, as they now styled themselves, did not choose to risk their popularity on their avowed principles; but relented, and passed the bill which they had before refused. This removed all difficulty. Andrew Ellicott, a distinguished mathematician of Philadelphia, was despatched by the president, as commissioner on the part of the United States, to ascertain the latitude of the line on the Mississippi, and to have it run, to receive the posts; and in fine, to execute the treaty with Spain. Why it was not promptly done in good faith, will appear in the transactions of 1797.

In the mean time, there were really three parties in Kentucky, which deserve at least a description:

1st. The “American Party,” the *federalists*, detached from all foreign interests and influence; their numbers however were but small, and so perfectly overrun and browbeaten, by the other two, as not only to be merely incapable of doing any thing; but deeming it prudent, and even necessary to be silent; with a very few exceptions.

2d. The great “Jeffersonian Party,” inclining to America, but hating England, and much attached to France; strongly sympathizing with their atlantic brethren of the same political sect, and much disposed to abuse the federalists—because among other things they did not resign the government, to their leaders. In the main, the great body of these, meaning well, but deluded—mistaking friends for foes, and foes for friends; right measures for wrong, and wrong for right; affectation for principles, and pretence for knowledge.

3d. The “Spanish Party,” a small, but persevering band, like moles working in the dark; joining the Jefferson faction, the more effectually to oppose the federalists, and to identify themselves with the infatuated multitude; who they were to have on their side, should they succeed. What hopes, and expectations had been defeated, by the public treaty with Spain! Had it not have taken place, Mr. Sebastian would have had one for them—and that would have been satisfac-

tory to their minds, that the United States, never desired to obtain the navigation of the Mississippi for the western people; while these meritorious patriots had. Colonel Nicholas, could have made it all as plain as a noonday sun. While every intelligent man of reflection, would have seen that this underhanded intrigue, and the expectation of Spain, that Kentucky would detach herself from the union on that account, had impeded the attainment of the object, for years.

Such was the situation of Kentucky as to parties: The general election was to take place in May. As it approached it excited considerable interest; every part of the legislative, and executive departments, were to be reorganized. The choice of electors, of governor, and senators, had become an object—the *aristocracy* of the senate was to be checked, extirpated, or overawed. The governor, though possessed of a negative upon bills, which no less a force than two-thirds of both houses, could overcome, had however, so used it, as not to alarm the democracy—and he was, as yet, no aristocrat.

General B. Logan, and James Garrard, Esq. perhaps, he should be styled, "Reverend"—as he had recently been, or was then a preacher in the Baptist society; were the candidates, for the office of governor. Both were thought sufficiently democratic; and the votes were nearly equal; Garrard, was certified to be the governor. The first of June, he entered into the office, and chose for the secretary, Harry Toulmin, who had been a follower of Doctor Priestly in England, and recently a preacher, of the Unitarian sect. Hence they preached no more, but left the care of souls to others—and applied themselves to the more immediate duties of their respective offices; which they discharged to the general satisfaction.

At the November session of this year, which was opened as was the first, by Isaac Shelby; the governor, in person made the following communication, in substance:

"Gentlemen of the Senate and House of Representatives:

"I cannot neglect this opportunity of expressing through you to my fellow citizens in general, the grateful sense of obli-

gation which I feel, for the expression of confidence, evinced in my election.

"Having no views, but such as embrace the good of the commonwealth; I enter into the duties of my office, with the hope that my unwearied diligence will enable me to fulfil the expectation of my constituents.

"With peculiar pleasure it is, that I call your attention to the present state of the country, contrasted with what it lately was, involved in war with a cruel foe, on all our borders—and now, "by the directions and exertions of the federal government, as the instrument of a wise and gracious providence, the blessings of peace, no longer in expectation, are in our enjoyment." Add to this, the increase of population; the extension of the settlements to the extremities of our territories; the flourishing state of agriculture; the increase of improvements; the establishment of manufactures; a year of the greatest plenty, in succession to one of the greatest scarcity, with the hopeful prospects opening to agricultural industry, and commercial enterprise, by means of the late treaty with Spain; which has opened the navigation of the Mississippi, and a port at Orleans, for us; objects long and ardently desired: and with this accumulation of blessings, extending our views to the security of our rights by means of our constitutions and laws, I might ask in the exultation of an American citizen, where is the nation, that hath greater reason to be thankful, contented, and happy?

"Thus fortunately circumstanced, our present situation seems peculiarly favourable to legislative deliberation; while it invites the attention to a calm review of the laws in force. Suffer me to refer you to some of them. The first to be mentioned; as directly affecting humanity, are those of the criminal code; and the law respecting grand juries. Crimes of magnitude escape punishment, while those of a trivial nature are punished with an undue severity: And however this course of procedure may suit despotic governments, it derogates from the justice, and the honour, of a free and enlightened state.

"In relation to the adjustment of the boundary between Virginia and this state, the executive will want the aid of the

legislature. Commissioners have been appointed by each state; yet the business, I am sorry to say, has not terminated so happily as was anticipated; owing to a disagreement between them in construing the law upon which they were to proceed. The commissioners' report on the subject will be laid before you.

"Gentlemen of the House of Representatives: The expenses incurred in the business of the commission, together with the compensations to those engaged, are yet to be provided for; on you it devolves to make such provision, which is respectfully recommended to your consideration.

"The general revenue laws of the state seem to require careful revision. The act establishing a permanent revenue, seems to have undergone so *many hasty alterations*, that it has become so complex, and susceptible of so many constructions, that its operation is considerably impeded, and sometimes its effect defeated. While the collectors are authorized to collect the arrearages of 1792, and '93, it is doubted if the law will compel them to pay the money collected, into the public treasury: The attorney general says it will not. Another part of this law, subjects land not entered for taxation within a limited time, to be forfeited to the state. Can, or ought, such forfeiture injuriously affect the rights of others who have complied with the law? It may be a question, as to nonresidents, whether the forfeiture is not an infraction of the seventh article of the compact with Virginia? and if so, a violation of the constitution? These matters being deemed worthy of attention, are on that account presented to your view.

"Gentlemen of the Senate and of the House of Representatives: The act authorizing the governor to transmit certain papers to the secretary of the war department, &c. has been acted upon by my predecessor; measures were also taken to settle the accounts and receive the money: I have been officially informed that the claims were not allowed; on the ground that they had not been provided for by law, and that an application to congress was necessary. I shall lay the papers before you, and wait for instructions.

"The Green River settlers, availing themselves of the act of last session, have paid about four thousand pounds into the

public treasury for lands taken up. Those who have not paid, have no doubt forfeited their claims to the state—but I do very sincerely recommend them as proper subjects of legislative indulgence.

“The auditor’s statement exhibits a balance of more than eleven thousand pounds, in favour of the state. This is a subject on which I congratulate you; and at the same time take the liberty to express a hope that its disbursement, will be on objects of general utility.

“The act for transcribing certain entry books, has been complied with.

“The appointments to office, since last session, will be laid before the senate.

“Before I take my leave, permit me, fellow citizens, to assure you of my promptness to concur with you in the prosecution of every measure which will promote the further prosperity and happiness of the commonwealth, and secure those blessings of which Heaven has given us the possession.”

This said, the governor retired, as did the representatives, and casual auditors; well pleased with the *speech*, though written, and read. In truth, it will be found on examination, to contain in a simple and perspicuous style, much useful and important information, of an historical, as well as legislative character; and of a pleasing nature in general.

In corroboration of what was said of the extension of the settlements, &c. a number of new counties were created by acts of this session.

The first, was BULLITT, composed of parts of Jefferson and Nelson counties; “beginning on Salt river opposite the mouth of Mill creek; thence a straight line to the Elk lick, near Mr. Chapman’s; thence a straight line to Floyd’s fork, where the public road from Louisville to Bardstown crosses the same at Hickman’s; thence a direct line to a point on the boundary line between Shelby county, and the said county of Jefferson, seven miles northwardly of the mouth of Plumb creek; thence with said line to Salt river, at the mouth of Plumb creek; thence with a straight line to the mouth of the west fork of Coxe’s creek; thence up the same to the head; thence to the nearest

waters of Wilson's creek; thence down said creek to its junction with the Rolling fork; thence down the same to Salt river, and down that to the beginning." To take effect from and after the first day of January, 1797.

Next, Logan county was divided, and a new county created, from and after the first day of March, 1797, to be called CHRISTIAN: "beginning on Green river, eight miles below Muddy river; thence a straight line to one mile west of Benjamin Hardin's; thence a straight line to Tennessee state line, where it crosses the Elk fork; thence along the said line to the Mississippi; thence up the same to the mouth of the Ohio; and up the same to the mouth of Green river; thence up the same to the beginning."

MONTGOMERY was a third county erected at this session, and to have effect from and after the 1st day of March, 1797: "beginning on the Bourbon line, at a red oak tree, marked C. L. on the side of the road leading from Mount Sterling to Paris; thence a straight line to strike the dividing ridge between Hinkston's and Stoner's waters, where the road leading from Winchester to Mount Sterling, crosses said ridge; thence the same course continued, crossing Red river, until it strikes the Kentucky river;" and including all that part of Clark county, which lies to the north and east of the above boundary, in the said county of Montgomery.

BRACKEN county was also created at this session: it was composed of such parts of Mason and Campbell, as were included within bounds "beginning on the Ohio river, one and a half miles below the mouth of Lee's creek; from thence a direct line to the north fork of Licking, such a course as will intersect the end of a line drawn nine miles due west from Mason court house; thence a direct line to the mouth of Beaver creek, on Licking; thence down Licking to a point half-way between the confluence of the north and south forks thereof; thence a direct line to the mouth of Big Stepstone, on the Ohio river; thence up the same to the beginning;" to have effect from and after the first day of June, 1797.



The register was placed on the civil list, and allowed a yearly salary of two hundred pounds.

Logan county was again divided, whence sprang WARREN; to have effect from and after the 1st of March, 1797: "beginning at the mouth of Little Muddy creek; thence a direct line to the old Buffalo ford, about one mile above James Hall's, on Gasper river; thence a direct line to Colonel Dugan's, so as to include him in the proposed county; thence a line to strike the Tennessee line, so as to include a settlement known by "the Georgia settlement" in the said county of Logan; thence with the Tennessee line to the Cumberland river, and up Cumberland to the Green line, and with the Green line to Green river, and down Green river to the beginning."

A sixth county was made, by the name of GARRARD: to take effect from and after the 1st day of June, 1797; "beginning at the confluence of Dick's river, with the Kentucky river; thence up Dick's river, with its several meanders, to the mouth of White Oak creek; from thence a direct course to the tan-yard, where the road leading from the mouth of Hickman to the Crab Orchard crosses Gilbert's creek; thence continuing the same course to the Madison county line; thence with said line to Harmon's lick; thence to the White lick, and down the White Lick fork to Paint Lick creek; and down the said Paint Lick creek to the Kentucky river; thence down said river to the beginning."

This general assembly, probably under the influence of the governor's recommendation, seems to have become the revisers of former acts; which they sometimes duplicated, and sometimes reduced into one: whether they were cleared of their complexity, and ambiguity, may well be doubted.

The titles of some of these reducing acts, will be recited:

1st. "An act to reduce into one, the several acts for establishing county courts, and regulating proceedings therein, and concerning the appointment of justices of the peace, and their jurisdiction." And in fact, a new law was made, containing twelve sections, occupying five large octavo pages, which

without repealing, by construction, superseded all former laws on the subjects coming within its provisions.

2d. "An act to amend an act entitled 'An act to establish an inspection of flour and hemp.'" Neither had this any repealing clause. This had only five sections.

3d. "An act to reduce into one the several acts and parts of acts concerning limitations of actions." This had nine sections; but no repealing clause.

4th. "A collection of the acts or parts of acts of the Virginia assembly concerning the titles to lands in this commonwealth." This, though not in the usual style of enactment, was an act; and received, like other acts, the approbation of the governor. This extended to many pages, and with some prelections by the editor of the laws, together with those passed by Kentucky, as amendments, not less than eighty.

5th. "An act to reduce into one the several acts concerning the examination and trial of criminals, grand and petit juries, venuries, and for other purposes." This act has sixty-two sections, a repealing clause, and something over twelve pages: yet its subjects are ill digested.

6th. "An act to amend an act entitled 'An act to establish district courts in this commonwealth.'" This act has twenty-five sections, five pages, and a repealing clause.

7th. "An act to reduce into one the several acts for preventing vexatious suits, and regulating proceedings in civil cases." Thirteen pages, and forty-five sections, sufficed for the subjects of this act. No repeal of former laws.

8th. "An act to reduce into one the several acts establishing courts of quarter sessions, and directing the proceedings therein." Only five or six pages, and seventeen sections, without a repealing clause, comprehended the contents of the act with the foregoing title.

9th. "An act to reduce into one the several acts directing the rules and proceedings in the courts of chancery." About eight pages, and thirty-nine sections, without a repealing clause, contain the matter of this act.

10th. "An act to reduce into one the several acts and parts of acts, concerning executions, and for the relief of insolvent debtors." Nineteen pages, and thirty-eight sections, no repeal of former laws, furnish room for, and denote the distribution of, the contents of the foregoing act.

These may suffice, for specimens of legislation at this session, in relation to public acts. These, however, were not exempt from the fate common to all preceding laws, of being *amended*; that is, altered, and changed. It is possible that some of the acts whose titles have been recited, were furnished by the public revisers: not the more perfect on that account.

Among the various other acts, passed at this session, which will not be noticed, there is one, which although it has been made the subject of remark, will still elicit further observation: and the more especially, as it carries the practice of abolishing courts, and of removing judges, by act of the legislature, to an extreme which completely overturns, and renders nugatory, those parts of the constitution, which were intended to secure to the judiciary department a reasonable share of independence of the legislature: such as, that "the judges shall hold their offices during good behaviour;" and although impeachable, or removable upon an address to the governor, yet requiring that two-thirds of the senate must concur to effect a removal in the first case; and the same proportion of both houses, to sanction an address, in that mode of procedure.— Besides, that the eternal principles of justice, require, that one accused, although a judge, should have an opportunity of hearing the allegation, and of defending himself, before he is condemned. Again—it is asserted, that *a judge receiving a commission under the constitution, to be held during good behaviour, has a legal right vested in him, upon that condition; which is held to be as clear an inference of constitutional law, as that he has a right to decide the cases brought before him.* These considerations notwithstanding, the legislature of this session (others having previously attacked and destroyed the inferior courts, and thus displaced the judges) passed "An act establishing the court of

appeals." Having the character of an original law; whereby the court of appeals then in existence, had it operated, must have been superseded, or duplicated. The governor, however, as it seems, approved the law, but neglected to execute it;—so that it had no effect, but to demonstrate the lust of law making. The fact of the passage of the act, &c. stands on record: the precedent is complete, as to its passage: motives are not known, nor need they be asked for—because they may be concealed, feigned, or disguised. These precedents have since been variously repeated, and once at least, in order to get rid of a judge, or judges; hereafter to be seen.

Another act of great importance to society, and especially in the administration of justice, was one, entitled, "An act to reduce into one the several acts or parts of acts concerning sheriffs." This act has thirty-four sections, no repealing clause, and covers between twelve and thirteen pages—importing by its title, and so understood among the people to include every thing appertaining to the rights, disabilities, and duties of those officers. Upon this construction, however, some important provisions, contained in former laws, both as to principal, and deputy sheriffs, calculated to guard the people against malepractices, were left out of this revising, and reducing act. Such as for example, that the principal, should not farm, let, or sell, his office—that a deputy, should not act as such, for more than two years in succession, &c.

Several laws were to improve the administration of justice, such at least, is supposed to be their object—such as, for instance, "An act directing the method, of proceeding in courts of equity against absent debtors, or other absent defendants, and for settling the proceedings on attachments against absconding debtors;" "An act for the relief of creditors against fraudulent devises;" and "An act directing the mode of suing out and prosecuting writs of habeas corpus:" besides others, referred to in a previous part of this history. It remains to mention some which interfered with private rights; and were wholly exparte. Such as "An act authorizing Harry Innis to convey certain lands;" "An act to vest the estate of Joseph Barnett

deceased, in commissioners, for the benefit of his creditors?" and "An act for the relief of Isaac Butler." In all fifty-three acts, covering two hundred and forty-three pages—the mere titles only, of eight being inserted.

This species of information, will give some idea of the rapid multiplication of the laws, of their imperfection, and frequent alteration; of the variety of subjects acted on, and of the little care and great labour, of legislators.

Before the narrative for the year is closed, it is deemed pertinent to remark, that a breach made by the rulers of France, with the United States, ostensibly on account of the late treaty with Great Britain; was growing with the lapse of time, and occurrence of events. President Washington whose patriotic and liberal mind, embraced the hope, dear to him, of uniting anti-federalists, to federalists, and of presenting to foreign nations the formidable image of an undivided people, in support of a national government; had, on the same principle that he took Mr. Jefferson into the cabinet, afterwards sent Mr. Monroe as minister to France: who instead of serving his patron and the United States, by firmly and ably maintaining the line of policy adopted by them; which was to maintain independently, the neutrality of the United States, in all their rights of treaty, and otherwise; forgot, it would seem, his office, and his duties; countenanced unfounded, and untoward claims of France, upon his own government; and even cherished her discontents, and growing resentments, ostensibly on account of the treaty; but really because the United States would not join her, in the war against Great Britain. Under these circumstances, and urged by his anxiety to have a full and just representation of his past transactions, as well as of his present disposition, and future views laid before the French government, before it should take any practical measures, of a violent or unfriendly character; the president determined to supersede Colonel Monroe, by the appointment of General Charles Coatsworth Pinkney. A man of high merit, the most unblemished character, and known partiality to France; but of the president's politics, as to foreign nations, and the conduct of

the United States: him, the French cabinet assuming much haughteur refused to receive. And thus shut the door against those friendly communications and explanations, which he was destined to make. When a friend is spurned from the door of a friend, what but enmity can ensue? Nay, it was evinced already, at least on the side of France. She, although unprincipled, and eager for plunder, did not think it yet expedient, to strike the decisive blow. There was an approaching election to take place in the ensuing autumn, of persons to choose a president, and vice president of the United States. An opinion, had gone abroad, that President Washington, would withdraw to private life; and that Mr. Jefferson would probably succeed him: in that event, France, whose friends in the United States (Kentucky furnishing her full quota) were not only numerous, but noisy, expecting every thing to be conceded to her, did not like to endanger the loss of those friends, by precipitate measures. Therefore she tempered her ire, with a few grains of policy. In the mean time President Washington, published his valedictory; in which he declined further service. This removed, all difficulty from the Jefferson party, who till then had been kept in suspense by the usual expression of public opinion in favour of Washington. For although the leaders of the party, had deserted, and denounced him; yet many of their followers in all other points, withdrew from them, on this. Nor was it long before the rival candidates were known. John Adams, then vice president, was taken up by the federalists, for president; and Thomas Paine, late minister near St. James's, for vice president. The other party, exerted itself for Mr. Jefferson alone.

Their previous contests, about the British treaty, in which the house of representatives in congress, as to several points, exhibited a majority of Jeffersonians, disaffected Americans, French party, or "republicans," as they called themselves, had produced great heats, and animosities; and which were by no means allayed in this contest. Admitting both parties to have been sincere, of which there is no reason to doubt, as men may be as candid in error, as when correct; when in the wrong, as

in the right; yet it is to be asserted upon the most deliberate review, that the neutral system adopted by the president, and supported by the federalists, was the true and genuine American policy; while the course pursued by Mr. Jefferson, and his adherents, was of a character perfectly the reverse. So that if they made pretence to be honest men, they proved to be weak politicians; except in the art of managing the multitude. Their means for effecting this object, being adverted to, will be found to place their morality upon no higher a grade than that of their national policy; suppressions of truth, and assertions of falsehood—gross misrepresentations of federal men, and measures, had been, and continued to be, the course pursued by them. President Washington, as already seen, so far from escaping them, had been, and yet was, an object of their peculiar resentment, and malicious animadversion. No review, however, can do justice to the parties in this controversy, without recurring to French affairs; nor can more than an epitome be offered.

To Louis XVI. of France, the United States had rendered their thanks, and their gratitude, for aiding them in their attainment of independence. But a revolution had taken place in that country, and the head of Louis had been cut off by a triumphant party, who had determined to send a minister to the United States: always an important measure in its commencement; but in that instance, much enhanced by attendant circumstances, both in Europe and America. President Washington, expecting this new minister in 1793, had made certain queries, as his manner was, on interesting occasions, touching his reception, in order to have the opinion of his cabinet ministers; although probably, he did not doubt as to any one of the points. Mr. Jefferson was one of those ministers: and although the queries, were resolved in favour of the reception of the minister from the French republic, as it was called, who was Mr. Genet, a firebrand, as already seen, yet these queries, about this year, were brought forth in one, of a series of virulent publications against the federal administration. Making the mere matter of consultation, the topic of an

inflammatory philippic against the president. An extract is worthy of commemoration; notwithstanding its fabrication was the result of treachery, no less than of the most rancorous party spirit: for the document referred to, had been committed in confidence, to the cabinet ministers only. It commences: "The foregoing queries were transmitted for consideration, to the heads of departments, previous to a meeting to be held at the president's house. The text needs no commentary. It has, stamped upon its front, in characters brazen enough for idolatry to comprehend, perfidy and ingratitude. To doubt, in such a case, was dishonourable; to proclaim those doubts, treachery. For the honour of the American character, and of human nature, it is to be lamented that the records of the United States exhibit such a stupendous monument of degeneracy. It will almost require the authenticity of holy writ, to persuade posterity that it is not a libel, ingeniously contrived, to injure the reputation of the saviour of his country." While this was said, with the view of persuading the people that the president was the enemy of France, and thus alienating them in their enthusiastic admiration of the revolution, from him, who is confessed to have been the saviour of his country. Mr. Jefferson, either knowing his own negligence, by which his copy of these queries had got into the hands of his clerk, Monsieur Freneau, and were thence conveyed to the French legation; or conscious that he would be suspected of having betrayed the confidence reposed in him, thought it necessary to write to the president, and assure him, "that this breach of confidence must be ascribed to some other;" taking occasion to remark withall, in the same letter, "that he was totally abstracted, from all party questions."

To this letter, the president replied:

"If I had entertained any suspicion before, that the queries which have been published in Bache's paper proceeded from you, the assurances you have given of the contrary, would have removed them—but the truth is, I harboured none.

"I am at no loss to conjecture, from what source they flowed;



through what channel they were conveyed; nor for what purpose they, and similar publications, appear.

"As you have mentioned the subject yourself, it would not be frank, candid, or friendly, to conceal, that your conduct has been represented as derogating from that opinion I conceived you entertained of me; that to your particular friends and connexions, you have described, and they have depounced me, as a person under a dangerous influence, and that if I would listen *more* to some *other* opinions, all would be well. My answer invariably has been, that I had never discovered any thing in the conduct of Mr. Jefferson, to raise suspicions in my mind, of his sincerity; that if he would retrace my public conduct while he was in the administration, abundant proofs would occur to him, that truth, and right decisions, were the *sole* objects of my pursuit; that there were as many instances within his *own* knowledge, of my having decided *against*, as in *favour* of the person evidently alluded to; and moreover, that I was no believer in the infallibility of the politics or measures of any man living. In short, that I was no party man myself, and that the first wish of my heart was, if parties did exist, to reconcile them.

"To this I may add, and very truly, that until the last year or two, I had no conception that parties would, or even could, go the lengths that I have been witness to; nor did I believe, until lately, that it was within the bounds of probability—hardly within those of possibility—that while I was using my utmost exertions to establish a national character of our own, independent, as far as our obligations and justice would permit, of every nation of the earth; and wished by steering a steady course, to preserve this country from the horrors of a desolating war, I should be accused of being the enemy of one nation, and subject to the influence of another; and to prove it, that every act of my administration would be tortured, and the grossest and most insidious misrepresentations of them, be made, by giving one side only of a subject, and that too in such exaggerated, and indecent terms, as could scarcely be

applied to a Nero—to a notorious defaulter—or even to a common pickpocket. But enough of this—I have already gone further in the expression of my feelings, than I intended.”

Among the infamous libels of the day, were hunted up, and republished as genuine, a series of feigned and forged letters, which were written during the war, published in 1777, and ascribed to Washington, for the purpose of destroying public confidence in his patriotism, and fidelity to the United States; for which they were calculated, had they been his production; but they then detected themselves, by statements, at the time notoriously false: for which they had been consigned to a merited execration, and oblivion. But now, published to a new generation, they had a considerable effect; especially as the president made no public denial of them, until about the time he went out of office.

But one of the most insolent and atrocious things which were attempted to influence the approaching election, was the interference of Adet, the French minister. He chose this time, to make a communication of the complaints, whether imaginary or real, that France had against the United States; and to conclude it by recurring to the war, in which he said, “Frenchmen mingling with Americans, shed their blood, to establish the independence of the latter in a ferocious war, against those same Englishmen, who had sworn the destruction of France, now engaged in a similar contest for liberty and independence.” With much more, pathetically written, and connected with other representations, calculated to shew that from the present administration of the government of the United States, and its supporters, France had nothing to expect, or to hope: that indeed his powers as minister were ordered to be suspended; but that it was not to be considered as a rupture between the two nations, *but as a mark of just discontent, which was to last until the government of the United States returned to sentiments, and to measures, more conformable to the interests of the alliance, and to the sworn friendship between the two nations.* An abstract intended to produce the strongest possible effect on public feel-

ing, was made from this letter, before it was sent to the secretary, and published immediately after. The design was too obvious to be mistaken—it was to affect the ensuing election.

The contest, in which Kentucky deeply sympathized, as “republicans,” with all other republicans, whether French or Americans, terminated in due time, in favour of Mr. Adams for president, and Mr. Jefferson for vice president.

But this was a sore defeat to the rulers of France, and their partisans. There was, nevertheless, created for them, a new focal point. Mr. Jefferson was again brought to the capital of the United States, and once more placed in a prominent situation in the government. In the mean time, however, he wrote his letter to his friend Mazzei. And as it is deemed peculiarly characteristic of the author, who can but be interesting, it will be inserted here:

“Our political situation is prodigiously changed since you left us. Instead of that noble love of liberty, and that republican government which carried us through the war, AN ANGLO-MONARCHIO-ARISTOCRATIC PARTY has arisen. Their avowed object is to impose on us the substance, as they have already given us the form of the British government. Nevertheless the principal body of our citizens remain faithful to republican principles. All our proprietors of lands are friendly to those principles; as also the men of talents.

“We have against us, the executive power—the judiciary power, two out of three branches of our government—all the officers of our government—all who are seeking office—all timid men, who prefer the calm of despotism to the tempestuous sea of liberty—the British merchants, and the Americans who trade on British capitals—the speculators—persons interested in the public funds—establishments invented with views of corruption, and to assimilate us to the British model in its corrupt parts.

“I should give you a fever, were I to name the apostates who have embraced these heresies. Men who were SOLOMONS IN COUNCIL, AND SAMPSONS IN COMBAT, BUT WHOSE HAIR HAS BEEN CUT OFF BY THE WHORE OF ENGLAND.

"They would wrest from us that liberty which we have obtained by so much labour and peril; but we shall preserve it. Our mass of weight and riches is so powerful, that we have nothing to fear from any attempt against us by force. It is sufficient that we guard ourselves, and that we break the *Lilliputian ties* by which they bound us in the first slumbers which succeeded our labours. It suffices that we arrest the progress of that system of ingratitude and injustice towards France, from which they would alienate us to bring us under British influence.

(Signed)

"THO: JEFFERSON."

This letter was published in the *Paris Moniteur*, of the 25th of January, 1797: of course, written the year preceding—that is, while Mr. Jefferson was professing an abstraction from all political questions, and making to President Washington, professions of his respect and esteem. Callender's libels against that great and good man, since known to have been approved, and paid for, by Mr. Jefferson; might have been more gross upon the president, and the federalists, who supported him, but they could not have been more complete, or comprehensive. Thus, and by other means no less obvious and flagrant, was the animosity of France against the United States kept up, encouraged, and fomented, by prominent and influential citizens of the United States. While for this, and other evidence no less conclusive, or that Mr. Jefferson was the enemy of England, and of his own government, in favour of France, did the latter adopt him, of which demonstrations were given, as her candidate for the presidency of the United States. So far from this interference of a powerful foreign nation giving alarm to the party here, and inducing it to withdraw, it felt itself strengthened by it, and pleased with it; notwithstanding that the rulers of France still continued the door shut against the American minister, General Pinkney; who had been sent to them in the true spirit of amity and peace: and as a confirmation of their French feeling, the whole anti-federal phalanx throughout the United States, Kentucky included, gave its vote to Mr. Jefferson for president: at the very time, too,

the commerce of the United States was suffering severe injuries, from the depredations of French cruisers, in the West Indies. But this history is compelled to forbear details on these subjects.

[1797.] Mr. Adams, having become the president of the United States on the 4th of March, 1797, could not withhold his attention from the relative conditions of France, and the United States; and feeling as a true American executive, on the receipt of General Pinkney's despatches, issued his proclamation soon after, for congress to meet on the 15th of June.

At the meeting of congress, the president pursuing the example set him by his immediate predecessor, made his communications in person. Adverting to the speech of the president of the French Directory, delivered to Colonel Monroe, in his last audience; he said, that it "disclosed sentiments more alarming than the refusal of a minister; because more dangerous to our independence and union; and, at the same time, studiously marked with indignities towards the government of the United States. It evinces a disposition to separate the people from their government; to persuade them that they have different affections, principles, and interests, from those of their fellow citizens, whom they themselves, have chosen to manage their common concerns; and thus to produce divisions fatal to our peace. Such attempts ought to be repelled with a decision which shall convince France, and the world, that we are not a degraded people, humiliated under a colonial spirit of fear, and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honour, character, and interest."

The president further avowing, the friendly and pacific dispositions of the government towards France, declared his intended attempt at further negotiation: pursuing this idea in good faith, he instituted the commission of Pinkney, Marshall, and Gerry; to whom he gave instructions to endeavour to effect reconciliation, and preserve peace, by all means compatible with the honour, and the faith, of the United States; but no

national engagements were to be impaired; no innovations to be made upon any internal regulations which had peace for their object; nor were any rights of the government to be surrendered.

Accordingly, the attempt at reconciliation was renewed—the envoys presented themselves in Paris, and were haughtily refused to be received.

In the mean time, insults on them were multiplied; and depredations on the commerce of the United States increased to a degree of open hostility. So firmly fixed, nevertheless, were the anti-federal party, in their principles, and their policy, that but few defalcations took place in it: while it regularly opposed the measures offered, to place the country in a state of defence: exclaiming equally against a navy, and an army. These men called themselves “republicans”—the French called themselves “republicans”—and although the latter had proved themselves, to be ferocious, ambitious, and depredating, even as to the former; yet they could not raise their hands, nor voices either, “against their brethren, of the same principle.” Such is the infatuation of faction, and party spirit, when it takes a foreign direction, and yields itself to the influence of sinister politicians: who, conscious of their own want of merit, and yet goaded by their ambition, to aspire to primary, or other high offices; which they cannot expect to attain by direct and honest means, resort to arts calculated to impose upon and delude the most ignorant, and always the most numerous portion of the popular mass; and who, in republics, have but too often the preponderance in the affairs of government; though beyond their understanding, as they are out of the range of their information and reflection. It being taken as an admitted postulatam, that no man can decide correctly, nor should he be called on to decide at all, that which, he does not, and has not capacity, to understand.

The legislature of Kentucky assembled in the month of February of this year, and resumed the business of law making, and mending. Like those of the last session, many of them are collecting and reducing acts. The titles of some of them will here be inserted:

1st. "An act to reduce into one the several acts concerning mill dams, and other obstructions in water courses." This act has only fourteen sections, and five pages.

2d. "An act to reduce into one, the several acts concerning wills, the distribution of intestates' estate, and the duty of executors, and administrators." Fourteen pages and fifty-eight sections, comprehend this act: which like the preceding, has no repealing clause. Whether such acts simplify, or complicate, the legal code, can hardly be a question.

The following is an original—"An act making an additional compensation, to the secretary of state, and certain other officers of government."

This act declares that the salary of the secretary shall be two hundred pounds annually—and that there shall be allowed to the auditor, register, and treasurer, fifty pounds each annually, in addition to their present salaries.

"An act concerning occupying claimants of land." This is the title of an act, which passed the house of representatives in 1794, but was rejected in the senate then, and each succeeding year, till now. But the senate had undergone a change, by an election in the last year; by which it had been imbued with much of the popular feeling on this subject, and to that it now yielded its former opposition.

This act will be found in its preamble, to depict the state of the country as to conflicting claims to land; and the consequent occurrence to those who had settled and improved the land as their own, of being evicted from it, by the establishment of a better claim; but who nevertheless, being subject by the rules of law, to account for rents, and profits, were equally upon principles of equity, entitled to be paid for improvements put upon the soil. In fact, the two modes of proceeding, the one by ejectment, where the party out of possession had the elder legal title—the other, by bill in chancery, where the occupant had the older patent, were in use. In the cases upon bills, if the chancellor decreed against the occupant, he ordered commissioners, to take an account of the rents and profits on the one side, and of the improvements on the other; and to state them in a report to the court, on which it decreed, according

to equity. But if the process was by declaration in ejectment, and judgment against the occupant, he was subject to be put out of possession—made account for rents and profits—and to get nothing for his improvements: unless indeed, he filed his bill with the chancellor, of whose jurisdiction there was much reason to doubt, in the then state of the law, and thus got an injunction, to stay the writ of possession, until the matter of rents, and improvements could be settled. This would be circuitous, dilatory, expensive, and troublesome. But could the court of chancery have entertained a bill of the kind supposed? One principal object of which was, to turn the trespasses (for such they were in the eye of the law) of the occupant, in relation to improvements, into equitable claims, or offsets, against the legal demand of the holder of the elder title, for rents, &c.: another object was, to reduce those legal demands into so many items of account to be adjusted by the chancellor, or his commissioner. The jurisdiction might, as it has been suggested, well be doubted. When a party goes into chancery, in order to obtain relief, he is required to exhibit a demand on the defendant, if not founded on law, at least founded on equity, *not inconsistent with law, or the lawful rights of the defendant.* The only exceptions to this general rule, are founded on fraud, accident, or mistake: none of which appertain necessarily to the occupant of land, under a bad title. Yet according to the plain sense of such men as cultivate the soil; and according to the feeling, and understanding, of the country, as early as 1794, the man, who under a claim derived from the public records, settled and improved land, should another evict him by better right, was thought, accounting for injuries, to have a just claim for ameliorations; on these principles, to avoid multiplicity of suits, and to place the adjustment of the reciprocal claims of the parties on the same footing, whether the title was tried at law, or in chancery, was the bill under observation, framed and introduced into the house of representatives, in the year last alluded to; its subsequent history to the time of its becoming a law, and fourteen years' practice on it, without alteration, may be considered as evidence of its utility, and of



its receiving the general approbation of the public. In fact, had it never been *amended*, it is believed, that the right in the legislature to pass it, never would have been questioned. Of course it never would have been declared unconstitutional, with that of 1812, which was substituted for it; and Kentucky would have escaped her present unpleasant dilemma, with the supreme court of the United States; who have pronounced her occupying claimant laws contrary to the compact of separation with Virginia; and therefore nullities. Far from admitting the correctness of this decision of the court, as from approving of the acts of 1812, and 1820, it is intended, in chronological order, to pay particular attention to each. It may suffice for the present to say, that the right of the legislature to pass the first act, was questioned coeval with its introduction into the house of representatives. James Hughes, Esq. a lawyer of eminence, and then a member, opposed to its passage, among other objections, alleged, that it was a violation of the compact of separation, which had been adopted as a part of the constitution; and which declared, "that the rights and interests of lands derived from the laws of Virginia, should be decided by the laws in force when the compact was made; and which of course precluded all legislation on the subject.\*"

To this, it was replied by Mr. Marshall, who introduced the bill, "that upon the gentleman's principles, the compact had been already violated, by passing the act of November, 1792, allowing further time to appoint agents for surveying lands, &c.: that indeed, it might be doubted if the law subjecting lands to execution, for the payment of debts was not also a violation of the constitution; for there certainly was no such law of Virginia, at the date of the compact; and that it did as certainly affect private rights and interests, of lands derived from the laws of Virginia. Nay, our revenue laws go to the same description of rights and interests: they are acts of the Kentucky legislature—yet their constitutionality has not been questioned. That indeed, if the doctrines of the gentleman from Fayette were correct, Kentucky had excluded herself by compact, from legislating on the subject of her lands, claimed

under the Virginia laws; then the only laws of origin and derivation of claims to land, known in the country. But he has mistaken both the character of the bill, and the nature of the compact. The latter, it is true, confines the decisions on conflicting claims derived from the laws of Virginia, *prior* to the separation, to the laws in force at the time of making the compact; while the former, supposing the right to be so adjusted, steps in to adjust, not a matter of right, or interest, existing *prior* to the separation; nor at all concerning the origin, or derivation of the parties' right or interests in the land itself; but solely concerning its occupancy, and the mutual demands of rents on the one side, and for improvements made on the land, on the other. Demands, which may now be settled and adjusted by the chancellor, where the suit is in chancery for the title, which gives him jurisdiction of the incidents, with the principal matter; but which it is understood cannot be adjusted where the proceeding is at law; as in case of ejectment. Now the purpose of the bill, is to extend the principles of equity to the eviction by ejectment; and without exposing the occupant to be turned out of possession, unrequited for improving the land, and subject to be sued for rents, or driven to a doubtful suit in chancery; at once to afford him a plain, safe, and expeditious mode of adjusting these matters, in the court where the judgment of eviction has been pronounced, and by the same uniform process, whether the decision was at law, or in chancery. Cannot the legislature do this? Can it not resolve by law, an equitable principle into a statutory provision? Then neither can it alter any part of the common law. Doctrines to which I cannot subscribe. But holding that the legislature can do all that the bill proposes to do—that it is a proposition too plain to need further argument; and considering the objections of the gentleman answered, I am willing to submit the bill to the house.” Which being done, there were eight votes against it; according to present recollection, the rest, a very abundant majority, in its favour.

An act of this legislature abridged the sovereign rights of the people, by forbidding them to choose for sheriff, any person

who has not obtained a *quietus* from the auditor of public accounts, for all taxes due while such person was sheriff. Alleging for cause, their frequent delinquencies: and no less evincing the utter futility of relying upon the people to correct at their elections, abuses in the administration, by a circumspect application of their votes.

That such portion of the people as are duly qualified including always, a large majority of the community who are best qualified, should choose the legislature, is essential to republican government; that even this select majority, should choose the executive, judicial, and administrative officers, by no means follows; but the very reverse is demonstrable. From the nature of men, their usual want of information as to the requisite qualities and qualifications, which fit men for these different offices; from the injurious effects of sympathy, between those who are to execute the laws, and those upon whom they are to be executed: a sympathy ever existing between the electors, and the elected; often giving rise to partialities, and odious distinctions in the execution of the laws, always an individual concern; contrary to the making of them, always a general concern, which prevents similar ill effects, from the like kind of sympathy between law makers and their constituents.

The same conclusion will be the result of an inquiry into the nature, and use of government; one of its objects is, to impress an idea of its power, and superiority, by means of the constitution and laws, over those who are to be governed; and this can only be done by its visible organs; who for that reason should not be the dependants, and humble servants of the governed: another object should be, after making this line of partition visible, to render it permanent. The utility of government is lost, when the governors and governed, are confounded. On one side, the laws are perverted, or lose their force; on the other, impunity for official negligence, takes the place of responsibility; and hence a general relaxation.

Consult the history of popular governments, and these inferences, and conclusions, will be confirmed.

But although we read of republics in ancient times, there were none which served as models for the late British colonies,

now the United States of North America, in framing their constitutions of government. Fortunately for them, they were derived from a government, where trial by jury was practised; freedom of the press respected—civil rights understood—and as much regard paid to the preservation of life, liberty, and property, as in any ancient or modern government, the world then contained, or probably ever produced; notwithstanding its monarchical form, and the corruptions which time had originated, or matured. Americans, were best acquainted with this model, and to this they have most conformed, after discarding those parts which were utterly inapplicable and inadmissible—the king, and lords; with all the paraphernalia of the crown, and the privileges of the aristocracy. Whereby, if it were not previously the case, every man in the United States was reduced to the condition of a simple citizen. Nevertheless, the same personal inequality of rich, and poor, ignorant and intelligent, capable, and incapable, existed among the people as before the renunciation of the former government. And while the three essential powers of government under every form, the legislative, the executive, and the judiciary, as in England, were separated, and thrown into different departments; it still remained a consideration of the first importance, in what manner those departments should be constituted. On this inquiry, much diversity of opinion and arrangement, took place in the different states. The British model, affording an example of a popular branch of the legislative body, was examined, and the mode of constituting it, the more closely, or distantly, imitated, as the true knowledge of human nature, and of government, on the one side, or of democratic prepossessions, on the other, prevailed. Every where the legislature was to be composed of representatives elected by the people; such was the case of the British house of commons. Still the most material question remained to be answered: shall all men of full age vote in the elections, or only a part? Instantly each side of the proposition had its advocates: the mere substance of the debate can alone find admittance here. Those who contended for an equal right of suffrage, referred to the

right which all had to life, and liberty, and consequently to their protection by government. They asserted the individual equality of men, and their capacity for discrimination, and selection. The services which the poorest and most ignorant might be called to render the state, in the capacity of soldiers, sailors, and marines—and their general utility as cultivators or mechanics. That, admitting a large proportion of those who would be received at the polls, were ignorant, and had no property, yet such being generally humble, would be controlled by the rich, who were better informed; and that while the right of suffrage would be gratifying to them, and interest them in the preservation of the government, property would incur no risk, nor those who held it, receive any impediment in its advancement; even from such as had but little or none.

This was at least specious; besides, it was at the commencement of a revolutionary struggle, and in a time of war, when the first state constitutions were made.

On the other side, it was readily admitted, that all the members of the state, females as well as males, those under, as well as those over twenty-one years of age, were entitled to the protection of government, in their lives, and liberties—that such protection was even due to aliens, and strangers, who might at any time be in the country—but it did not follow, that such were entitled to vote for law makers. That the right of suffrage was a regulated right; depending upon considerations of prudence and propriety, connected with the nature of men, and government. That as to the idea of all men's being *equal*, it was chimerical. That it was not true, when applied to the most savage and least cultivated nations; and that its absurdity was still more obvious, when rendered applicable to civilized society. That all had life, and were entitled to as much liberty as was compatible with the good of the community; and that these were necessarily secured by those general laws, which were or would be, enacted for all. But property, was no less an object for the protection of government, and the laws, than life and liberty: for of what value were these, unless they were comfortable? About which it were to be

confessed, there was much diversity of opinion among men. In one thing however, all must agree, that the acquisition of property, or riches, was wholly adventitious; depending mainly upon enterprise and capacity; that as an inducement to exert these for its acquirement, it must find perfect security in the laws, and their administration. That wealth was not merely a matter of personal accommodation; but that it invigorated the government, improved the country, furnished employment, and ensured a reward to labourers, encouraged the arts, and cherished the sciences; whereby society was accommodated, improved, and embellished; while the blessing of life, liberty, and free government were extended, enhanced, and rendered dear to all. But whether these effects took place, or not, every man of any discernment, must admit, depended essentially upon the laws which should be enacted, and the manner in which they would be administered. That the legislative power, necessarily being supreme, would give tone to the whole system—that such as were the law makers, such would be the laws—and that as were the electors of these legislators, such would they be. That these conclusions were derived, from a knowledge of human nature, confirmed by observation, and the testimony of history.

It were then important to decide who should be entitled to the right of voting for law makers.

There are two general descriptions of men in society, under the one, or the other, of which the whole may be included: nor is it believed necessary to make any discrimination more minute—"landholders," and "non-landholders." Among the first, we may expect to find intelligence, independence, and a certain interest, in the good order, peace, and prosperity, of the country. The other division certainly includes, the most indigent, the least informed; and those who have little or no interest in the security of property—in the regular and just administration of good laws—or in the prosperity of the country. Which shall rule? We have the model to which we have frequently referred, before us. The British house of commons is filled by the votes of "freeholders," to the exclusion of those who are

not: the latter being numerically, the majority of the whole nation. And to this discrimination, without doubt, and to a few other circumstances too obvious to need a remark, does Britain owe her internal peace, improvement, prosperity, and comforts; her external independence, strength, pomp, and renown. Her most enlightened men are called into her councils—her wise men steer the helm of state—those who are most interested in her prosperity, and happiness, make her laws; while her ablest judges expound and apply them. Order prevails, and every man finds his place. Have you a desire to know what would be the state of things in Britain, *were all free males above the age of twenty-one years, to vote in the choice of both branches of the legislature?* Then it is only necessary to imagine the reverse of what it is—and that after a succession of revolutionary struggles, with their usual horrors, the British empire, become a province of France.

But enough, our parent state, and a majority of the original states adopted the British principle, and required, of the voters, to be FREEHOLDERS OF LAND. While Pennsylvania, and perhaps some others, dispensed with that qualification; requiring however, in general, the payment of some tax, as evidence of citizenship, to entitle the individual to vote. And doubtless were effects traced, they would be found to correspond with their causes, as above indicated—subject always to the influence of concurrent, or opposing causes, as the case might be. Kentucky, which is a secondary state, derived from Virginia, has in relation to the right of suffrage abandoned her parent, and taken Pennsylvania for an example, with a further indulgence to the voter, who is not even required to have paid a tax of any kind. *The consequence has been to place the preponderating weight of the government in the hands of those who have the greatest ignorance of its concerns, and the least interest in its due operation and prosperity.* How else is its course of legislation, and its results, to be accounted for? But more on this subject, after more has been seen.

While it is to be remarked, that the case which gave rise to these observations, may shew, how by the inadvertence of the

voters, a specious ground may be afforded the legislature, to abridge their constitutional privileges. For example, the constitution annexed no manner of qualification, or disqualification, to the person offering to be elected sheriff; except that the same man could not be twice elected in any term of six years. To this, the legislature by the act referred to, add a further prohibition, which is to affect both the candidate, and the voters; for it declares that the latter shall not elect the former, unless he produces from the auditor, if he ever had been sheriff, a *quietus* for all former collections. But if the legislature could do this, so they might upon the same principle, require of the candidate, that he should be fifty years old, worth ten thousand dollars, or have made a pilgrimage to Jerusalem, &c. The people take this act very quietly—and nothing is heard about its constitutionality: and thus the sovereigns guard their own privileges, no better than they would those of others; while the legislature is permitted to violate them with impunity. It is true, the man who had been sheriff, and who had not in three years collected, and paid in all arrearages, was unworthy of the office a second time; and such should have been the decided and unanimous opinion of the voters; who on this ground should have rejected him: or if they did not, the legislature might, by penal laws have made it his interest not to be a candidate or accept the office if elected; and thus have preserved the constitution. But enough of this.

“An act concerning guardians, infants, masters, and apprentices,”—collects former laws on these subjects, and places them under the county courts: the details appear to be adapted to their several objects.

“An act concerning titheables, and directing the mode of laying and collecting the county levy”—also passed at this session; which subjects all free males, and the owners of all female slaves, over sixteen years of age, to pay a county tax, called, a levy, in the nature of an equal poll tax; to be yearly ascertained by the county courts respectively; collected, accounted for, and disbursed, for county purposes, under their



direction. Thus, is something collected from a description of citizens, who having none of the kinds of property taxed by the general revenue laws, would otherwise contribute nothing towards the support of government. It would appear as an anomaly in the constitutional system, had it been then introduced for the first time; but having been used to it while a part of Virginia, we received this part of the county arrangement with many others; and adhere to it because we have adopted it: notwithstanding it confounds the important principle, of levying money on the people, by a derivative, or second-handed legislation, with the executive, and judicial, power of intermediate management, and final disposal of the funds. The same persons at the same time they are members of these courts, being likewise eligible to the general assembly. Perhaps it may be said, that this is no more than what takes place in every corporation, and even, common towns; whose trustees may levy money, have it collected, and direct its application.

These seem to be convenient powers, and doubtless, should be provided for by the constitution; it is believed however, that it would be difficult to deduce such a power from that of Kentucky: which, in its jealousy of levying money on the people, provides that "all bills for raising revenue shall originate in the house of representatives;" the senate being allowed, the right of proposing amendments only. And yet, a secondary mode of taxing the people has sprung up in the legislature—which may originate in either house, and which under the denomination of "county levies," and "town tax," may even exceed, the general revenue. Upon principle, it may be remarked, that if the trustees of towns, being chosen by the people, are their representatives, the same cannot be said, as to the county courts. While it may well be questioned, whether the legislature can with propriety transfer the right of laying and collecting taxes, to a different body of men under any denomination.

Sundry acts for the relief of sheriffs, and others—some authorizing the transfer of real property of infants, and others, without their consent—one for a lottery, three for divorces, one

for "taking the sense of the people respecting a convention," and sundry others, making in all forty-three.

The year 1797 after the February session, was one of considerable quiet, though of much expectation in Kentucky.

The United States commissioner, Ellicott, was on the Mississippi, in order to run the line of boundary between her territories and those of Spain, and to receive the posts, from the latter; agreeably to the late treaty, between the two powers. While very unexpectedly, the territorial authorities of Spain, introduced various objections, and presented delays to its execution, as little foreseen, as they were difficult to be explained, by the United States government; until her commissioner detected an intrigue between the Spanish agents, and certain citizens of the United States, one object of which was to continue Spain in possession of the territory, that she had bound herself to relinquish, to the United States! These citizens were Kentuckians principally; and among them, were to be found the names, of a part of those formerly concerned and already mentioned as participating at an earlier stage of the same protracted and illicit intercourse. The time had now arrived when a last effort was to be made in Kentucky. And accordingly, Mr. Thomas Power, the former negotiator, was despatched to this country, from "THE BARON OF CARONDELET," to his friends, or those of Spain, in Kentucky. Mr. Sebastian, then a *pensioner*, residing near Louisville, and presenting the first point of approach, became the organ of further communication: Being furnished with verbal instructions, and written despatches, MR. SEBASTIAN, rode about fifty miles into the country, to see his friend JUDGE INNIS, to whom he unfolded his newly furnished budget, containing among other things, the following very interesting document, viz:

"His excellency, the Baron of Carondelet, commander in chief and governor of his Catholic Majesty's provinces of West Florida, and Louisiana, having communications of importance, embracing the interests of said provinces, and at the same time deeply affecting those of Kentucky, and the western

country in general, to make to its inhabitants through the medium, of the influential characters in this country, and judging it, in the present uncertain and critical attitude of politics, highly imprudent and dangerous to lay them, on paper, has expressly commissioned and authorized me to submit the following proposals to the consideration of Messrs. S. N. I. and M." That is, Sebastian, Nicholas, Innis, and Murray—as declared by Innis, upon oath—"and also of such other gentlemen, as may be pointed out by them, and to receive from them their sentiments and determination on the subject."

"1st. The above mentioned gentlemen are immediately to exert all their influence in impressing on the minds of the inhabitants, of the western country a conviction of the necessity, of their withdrawing and separating themselves from the federal union, and forming an independent government, wholly unconnected with that of the atlantic states. To prepare and dispose the people for such an event, it will be necessary that the most popular and eloquent writers in this state, should, in well-timed publications, expose in the most striking point of view, the inconveniences and disadvantages, that a longer connexion with, and dependence on the atlantic states must inevitably draw upon them, and the great and innumerable difficulties in which they will probably be entangled if they do not speedily recede from the union: the benefits they will certainly reap from a cecession, ought to be pointed out in the most forcible and powerful manner; *and the danger of permitting the federal troops to take possession of the posts on the Mississippi*; and thus forming a cordon of fortified places around them, must be particularly expatiated upon. In consideration of gentlemen's devoting their time, and talents to this object, his excellency the Baron of Carondalet, will appropriate the sum of one hundred thousand dollars to their use, which shall be paid in drafts on the royal treasury at New Orleans; or if more convenient, shall be conveyed at the expense of his Catholic Majesty, into this country, and held at their disposal. Moreover, should such persons as shall be instrumental in promoting the views of his Catholic Majesty, hold any public employ-

ment, and in consequence of taking an active part in endeavouring to effect a cession, shall lose their employment—a compensation equal at least to the emoluments of their office, shall be made to them, by his Catholic Majesty, let their efforts be crowned with success, or terminate in disappointment.

“2d. IMMEDIATELY after the declaration of independence, fort Massac should be taken possession of by the troops of the new government, which shall be furnished by his Catholic Majesty without loss of time, together with twenty fieldpieces, with their carriages, and every necessary appendage, including powder, balls, &c. together with a number of small arms and ammunition, sufficient to equip the troops that it shall be judged expedient to raise. The whole to be transported at his expense, to the already named, fort Massac. His Catholic Majesty will further supply the sum of one hundred thousand dollars for the raising and maintaining the said troops, which sum shall also be conveyed to and delivered at fort Massac.

“3d. The northern boundary of his Catholic Majesty’s provinces of East and West Florida shall be designated by a line commencing on the Mississippi at the mouth of the river Yazoo, extending due east to the river Confederation, or Tombigbee: provided that all his Catholic Majesty’s forts, posts, and settlements on the Confederation or Tombigbee are included in the south side of such a line, but should any of his Majesty’s forts, posts, or settlements fall to the north of said line, then the northern boundary of his Majesty’s provinces of East and West Florida, shall be designated by a line beginning at the same point on the Mississippi, and drawn in such a direction as to meet the river Confederation, or Tombigbee, six miles to the north of the most northern Spanish post, fort, or settlement on the said river. All the lands north of that line shall be considered as constituting a part of the territory of the new government, saving that small tract of land at the Chickasaw Bluffs, on the eastern bank of the Mississippi ceded to his Majesty by the Chickasaw nation in a formal treaty concluded on the spot in the year 1795, between his excellency S<sup>r</sup>. Don Manuel Gayoso de Lemos, governor of Natchez, and Augleakabee and

some other Chickasaw chiefs; which tract of land his Majesty reserves for himself. The eastern boundary of the Floridas shall be hereafter regulated.

"4th. His Catholic Majesty will in case the Indian nations south of the Ohio, should declare war or commit hostilities against the new government, not only join and assist it in repelling its enemies, but if said government shall at any future time esteem it useful to reduce said Indian nations, extend its dominion over them and compel them to submit themselves to its constitution and laws, his Majesty will heartily concur and co-operate with the new government in the most effectual manner in attaining this desirable end.

"5th. His Catholic Majesty will not either directly or indirectly interfere in the framing of the constitution or laws which the new government shall think fit to adopt; nor will he at any time, by any means whatever, attempt to lessen the independence of the said government, or endeavour to acquire an undue influence in it, but will in the manner that shall hereafter be stipulated by treaty, defend and support it in preserving its independence."

"The preceding proposals," says Mr. Power, "are the outlines of a provisional treaty, which his excellency the Baron of Carondelet is desirous of entering into with the inhabitants of the western country, the moment they shall be in a situation to treat for themselves. Should they not meet entirely with your approbation, and should you wish to make any alterations in, or additions to them, I shall on my return, if you think proper to communicate them to me, lay them before his excellency, who is animated with a sincere and ardent desire to foster this promising and rising infant country, and at the same time, promote and fortify the interests of his beneficent and royal master, in securing by a generous and disinterested conduct, the gratitude of a just, sensible, and enlightened people."

To which were added other observations, intended to shew that from the change of circumstances, and political situation of Europe, there was reason to suppose that the treaty recently

made with the United States, by his Catholic Majesty, would not be carried into effect by him. That nevertheless, such was his majesty's benevolent disposition, towards the inhabitants of this western country, that so soon as they should, by declaring themselves independent, put it in his majesty's power, he would by treaty, grant them a decided preference over his Atlantic connexions, on commercial subjects, by placing them on a much better footing, than they would be on, if the treaty of the United States should be executed. This despatch was dated Louisville, July 19th, 1797.

Upon its contents, Judge Innis made, as in 1806 he stated upon oath, the following reflections, to Judge Sebastian, with whom he was in consultation: "Upon which this deponent observed, that it was a dangerous project, and ought not to be countenanced, as the western people had now obtained the navigation of the Mississippi, by which all their wishes were gratified. Mr. Sebastian concurred in sentiment; but observed, that Power wished a written answer, and requested me to see Colonel Nicholas, saying, that whatever we did, he would concur in. I promised to visit the colonel in two or three days."

Then stating, that he did not communicate with Mr. Murray, proceeds: "This deponent rode to Lexington, and had a conference with Colonel Nicholas, respecting the communication from Power, who agreeing with this deponent, that the proposition ought to be rejected; he, Colonel Nicholas, instantly wrote an answer, which was copied by this deponent, signed by both of us, and directed by me; that the copy of our joint answer was taken possession of by me, and has been ever since in my possession, except for a short time," &c.; which identifies the copy produced; and which follows, without date.

"SIR: We have seen the communication made by you to Mr. Sebastian. In answer thereto, we declare unequivocally, that we will not be concerned either directly or indirectly, in any attempt that may be made to separate the western country from the United States. That whatever part we may at any time be induced to take in the politics of our country,

that her welfare will be our only inducement, and that we will never receive any pecuniary, or any other reward, for any personal exertions made by us, to promote that welfare.

"The free navigation of the Mississippi must always be the favourite object of the inhabitants of the western country; they cannot be contented without it; and will not be deprived of it longer than necessity shall compel them to submit to its being withheld from them.

"We flatter ourselves that every thing will be set right, by the governments of the two nations; but if this should not be the case, it appears to us that it must be the policy of Spain to encourage by every possible means, the free intercourse with the inhabitants of the western country, as this will be the most efficient means to conciliate their good will, and to obtain without hazard, and at reduced prices, those supplies which are indispensably necessary to the Spanish government and its subjects."

The foregoing was transmitted to Mr. Sebastian; who, it was ascertained, delivered it to Mr. Power, in the original; after he returned from a visit to General Wilkinson, commanding the troops of the United States, on the northwestern frontier.

It is not intended to make many comments on this subject; after the very few circumstances stated by Judge Innis, it can but be remarked, that the transaction would seem almost barren of incidents, were it not for the light thrown on it by Mr. Power, in rendering to his employer, an account of his mission.

Before, however, that is introduced, it will be proper to recite the reasons given by Mr. Innis, for concealing these communications from the president of the United States.

"This deponent says the reasons why he and Col. Nicholas did not communicate the subject to the president of the United States, were these:

"1st. That it was well known that neither of us approved of Mr. Adams' administration, and that we believed he kept a watchful eye over our actions; that the communication must depend upon his opinion of our veracity; and it would have the appearance of courting his favour.

"2d. That we both had reason, and did believe, that the then administration, were disposed upon the slightest pretext, to send an army to this state; which we conceived would be a grievance upon the people; and therefore declined making any communication on the subject, as we apprehended no danger from the Spanish government."

Never, probably, was a witness more unfortunate in assigning reasons for his conduct. They will, however, be passed without scrutiny.

The joint answer, wanting a date, deprives the subject of much illustration: while it has made an opening, heretofore not left wholly unoccupied, for the surmise, that it was not written, until after General Wilkinson had been heard from; whose course on the same subject, has been pretty fully developed by the common friend of the parties, Mr. Power, whose letters will be adverted to, for illustrations.

The commission with which he set out to visit Kentucky, &c. is dated, New Orleans, 28th May, 1797, and delivered to him the 3d of June ensuing. Its perusal fully justifies the proposals delivered to Mr. Sebastian, as previously detailed. He proceeded by the way of Nashville, where he was detained some days—thence to Louisville, Kentucky—where he was the 19th of July—and in the neighbourhood of Detroit, the 16th of August—having previously notified his approach, to General Wilkinson, through Captain Guyon. The general having gone to Michilimackinac, he took private quarters. On Wilkinson's return, they had an interview. The following is extracted from the official account of Power:—"General Wilkinson received me very coolly. During the first conference I had with him, he exclaimed very bitterly, 'we are both lost, without being able to derive any advantage from your journey.' He said the governor had orders from the president, to arrest me, and send me to Philadelphia—and added, 'that there was no way for me to escape, but by permitting myself to be conducted immediately, under a guard, to the fort Massac, and from there to New Madrid.' Having informed him of the proposals of the baron, he proceeded to tell me that it was a



chimerical project; that the inhabitants of the western states, having obtained by treaty, all they wanted, would not wish to form any other political or commercial alliances; and that they had no motive for separating themselves from the other states of the union, even if France and Spain should make them the most advantageous offers; that the fermentation which had existed four years back, was now appeased." That French spoliations had disgusted the Americans, and that some Kentuckians had proposed to him, to raise and march three thousand men into Louisiana, in case war should be declared between the United States and Spain. That the latter had no course to pursue under present circumstances, but to comply fully with the treaty; which had overturned all his plans, and rendered his labours for ten years, useless. That he had destroyed his ciphers, &c.; and that his *honour* did not permit him to hold correspondence with the Spanish government. He complained that his secret had been divulged: that he had known from the preceding September, that Spain did not intend to give up the posts, but would be compelled. That he might be named governor of Natchez, and he should then perhaps, have it in his power to realize his political projects.

With respect to the people of Kentucky, Mr. Sebastian had a different opinion. He said, if there is a war with Spain, she will have nothing to fear from Kentucky: and he has insinuated that it will be the readiest way to hurry them on to take an open part against the Atlantic states.

Mr. Power next gives his own opinion, and says:—"A great portion of the principal characters in Kentucky, Cumberland, and the northwestern territory, have been instigators of the expedition of Genet and Clark, against Louisiana; consequently they are enemies to those who are enemies of the French: more than one half of the rest, are those who take the greatest interest in a more intimate union of the western states with us; and many of those who remain, as they are not very desirous of gaining conquests over Spain, but only to preserve the limits and privileges marked in the treaty, will do what they can, to avoid hostilities.

"The people permit themselves to be implicitly governed by one of the parties mentioned; so that considering these circumstances, we may labour under no apprehensions on this account. But other more weighty reasons are opposed to their declaring themselves independent of the eastern states. I will content myself with relating the principal one. Whilst they will be making a treaty with the government of Louisiana, what certainty will they have that the cabinet of Madrid is not making a treaty at the same time, very different from what they may have agreed to here? *Experience has taught them to their misfortune*, that this is not a mere conjecture. Three motives alone would be able to impel them to break the confederation with the other states, viz:

"1st. War with the French republic.

"2d. A prohibition to navigate the Mississippi, and to establish themselves in the dominions of the king.

"3d. Their incapacity to pay in cash, their share of the common duties, (\$28,000,) or to see the government intent on recovering it by force.

"These are the axis upon which their policy turns."

Other gleanings from the same letter:

"To Mr. Benjamin Sebastian, I communicated the apparent motives, and likewise the real cause of my mission. He then proceeded to exhibit certain requisitions with which I had to comply; as, in case any one making exertions for Spain, should lose his office, he should be compensated by the king, &c.

"Consequent to these objects, we (that is, Sebastian and himself) resolved that he should make them known to Messrs. Nicholas, Innis, Todd, and other persons in whom he confided, who were zealous for the improvement, prosperity, and independence of Kentucky; and absolutely refusing to speak to Murray, or Breckenridge, on the subject, as he mistrusted both. The first is given to drink, infidelity and perfidy; the other, is known to hold conferences with them, tending to fulfil the wishes of the baron, and to concert measures to that effect."

Power had intended to return from Detroit by the way of Louisville, as at first intimated, to Mr. Sebastian; but General Wilkinson compelled him, doubtless to prevent detection, to take a route through the unsettled country of the Miami of the Lake, and the Wabash, to St. Vincennes, and thence by Massac, to New Madrid; under the care of Captain Chamburgh of the United States' troops, and an escort; ostensibly alleging that he was a messenger charged with despatches for him, as commander of the American army, which required an answer by the shortest; as the most speedy route.

At St. Vincennes, Power despatched a messenger to Mr. Sebastian; and doubtless awaited his return; but certainly giving an account of what had passed with Wilkinson; and his reasons for not returning by the way of the Ohio and Louisville.

If Mr. Sebastian had not been furnished with two letters, from Colonel Nicholas and Judge Innis, so that he should be ready to present Mr. Power, with an answer suitable to the general's determination, upon which they had "hung the law and the prophets," without more trouble; why, then it was but to send to Judge Innis, and get the answer, as soon as he could see Colonel Nicholas, have it written, copied, and transmitted.

Is this an uncharitable surmise? Why had not the letter to Power, a date? If it had been written at the first interview between Innis and Nicholas, in July, no reason can be assigned for not dating it. It was a despatch of a kind which required a date. But if it was not written until the last of September, or the first of October, then there was an important reason, why it should not bear date. Because there is a possibility, in every case where any matter is committed to paper, and delivered to another, that it may appear again: while Power's proposals were known to be in duplicate, with the 19th of July as their date; and should the reply to them shew a lapse of two months, or more, it would irresistibly imply, that the interval had been taken for information, consultation, and decision. Then common prudence, as well as

intriguing craft, and political sagacity, would withhold the date from the letter written at the time now suggested, and send it as it was, without a date.

Had these been young and inexperienced men, had this been the first time of their meeting to consult on the subject of *separate treaty* with the Spanish authorities, it should be passed over without a critical expose. But it has been ascertained, by written documents, and the oath of Judge Innis, habituated, to this intrigue, and a most reluctant witness, as will hereafter appear, that these four persons, last designated for consultation, had in 1795, after a similar consultation agreed to send Mr. Sebastian as envoy—and who was prevented from concluding a treaty only, by that which the United States had, very unexpectedly to them, just concluded, as already noticed—and to defeat which, had most undoubtedly been a part of their object. “Once a prostitute, and always a prostitute,” is a fair mode of argument—at least, among politicians. And the historian has a right to adopt it, and apply it, in the elucidation of his narratives, of political transactions. For although suspicion is an unlovely trait in private character; it is the parent of scrutiny; the vigilant sentinel on the popular watchtower; and the indispensable concomitant of political sagacity. But suspicion ceases, when facts, and their consequences, become established upon a rational basis of certainty; resulting from corroborating documents.

Spanish *negotiators*, and *negotiators* with Spaniards, had been accustomed to correspond in cipher; and to write, and read letters with double aspects. And such is that returned for an answer to the *treasonable* propositions made through Power, to the four distinguished Kentucky *patriots*, Sebastian, Nicholas, Innis, and Murray—the latter of whom had, it seems, become “infidel” to the Spanish cause—and of course was not called into council, by that ever useful emissary, Judge Innis. But, the letter without date: whatever character may be ascribed to the previous paragraphs; the last, is an overture for entering into a treaty, *with the inhabitants of the western country, by Spain*, in case of the inexecution of the treaty between Spain

and the United States, at that time obstructed, and suspended, by the Spanish authorities; in expectation of the event of this mission by Power.

But Wilkinson, gave way; and all failed. The general, knew the army: it was composed of citizens, faithful to the United States: it had been trained, and fashioned, under the eye, and in the spirit of General Wayne; before whom treachery cowered, and sought refuge in secrecy, antipathy, and concealment. Except a few corrupted by Wilkinson, the fidelity of the army was unshaken—its courage high—its sentiments truly honourable, and federal. Wilkinson was suspected, and he knew, as well as Judge Innis, and Col. Nicholas, that he was watched—even by that arch enemy to *treachery*, John Adams—president of the United States, at that time. Wilkinson knew more: he knew there were officers in the army, whose eyes were open to him; and that upon any demonstration of treachery, he would have been denounced, and arrested. And he,—what else could he do?—bitterly reproached his friend Power, and postponed the execution of his projects, in favour of Spain, to a future day—perchance, he might be named, for governor of Natchez: a hopeful event.

In the mean time, the *patriots* of Kentucky, (if it be allowable to use the word ironically, so often) conclude their rejection of proposals to disunion, to the party who made them, in the following terms, viz:

“We flatter ourselves that every thing respecting this important business will be set right by the governments of the two nations; *but if this should not be the case*, it appears to us that it must be the policy of Spain to encourage, *by every possible means*, the free intercourse with the inhabitants of the western country, as this will be the most efficacious means to cultivate their good will; and to obtain without hazard, and at reduced prices those supplies which are indispensably necessary to the Spanish government, and its subjects.”

Now, the plain import of this is, that if Spain will persist in refusing to carry into effect, her treaty with the United States, so that this important business shall not be adjusted between

the two governments, which we, however, would prefer should be done; why then it appears to us, that Spain pursuing her true interest, will by every *possible means* open a free intercourse with the inhabitants of the western country. What then, is within the scope of *possible means* of opening this intercourse for commercial purposes? Certainly, a *commercial treaty* between Spain, and the inhabitants of the western country. This is not only a possible means; but it is the obvious, and direct means. Not only that, but the parties had already digested the articles of such a treaty, ready for signature, and for use—had it not been obstructed by the *public treaty* made between the two governments; the execution of which, was the subject then in controversy.

Add to these facts, and reflections, that these *treasonable overtures*, were waved not only with a gentle hand, and a new inducement to Spain for refusing to execute the treaty—but that the whole transaction, was withheld from the knowledge of the president, because these *good* citizens disapproved of his administration, and both their motives, and the true character of their letter, will be manifest. Not withholding from Col. Nicholas, the full merit of disclosing to James Ross, a senator of the United States, his own representation of the proposals, and rejection, “AFTER the posts had been surrendered by the Spanish authorities”—which tested the execution of the public treaty.

An event of deep interest to Kentucky, not only as it secured to her citizens the free navigation of the Mississippi; but rendered an intrigue, which had divided the people and jeopardised the peace of the country for ten years, destitute of a plausible object, for its continuance. Of those who received pensions, only one has been completely detected—that was Sebastian: hereafter to be noticed, as an event of 1806.

It was rumoured that two Indians were killed on Stone's river, twenty miles above Nashville, by two young men who had been seen with them the preceding day—1st Nov. 1797.

The year 1797, being that immediately under review; produced an association in Lexington, and which was probably

imitated in a few other places, denominated the "Lexington Emigration society." The object appeared to be laudable, as a source of information, and in holding out inducements, to industrious farmers, and mechanics, to remove to the country; by stating the amount of the ordinary products of the soil, per acre; and the common prices of marketing; and also of the various species of mechanical labour, and productions. Of this society, Thomas Hart was president; John Bradford, secretary.

The following particulars are extracted for preservation:

*Average produce of one acre of land.*

Of wheat sown in corn ground . . . . .	25 bush.	Oats . . . . .	40 bush.
In fallow ground . . . . .	35 ::	Potatoes, Irish . . . . .	250 ::
Corn . . . . .	60 ::	Sweet . . . . .	
Rye . . . . .	25 ::	Hemp . . . . .	8 cwt.
Barley . . . . .	40 ::	Tobacco . . . . .	1 ton.
		Hay . . . . .	3 ::

*Lexington market prices.*

Wheat, per bush. . . . .	\$1 00	Potatoes, Irish, per b. . . . .	\$0 33
Corn :: . . . . .	20	Sweet :: . . . . .	1 00
Rye :: . . . . .	66	Hemp, per ton . . . . .	86 66
Barley :: . . . . .	50	Tobacco, per cwt. . . . .	4 00
Oats :: . . . . .	17	Hay, per ton . . . . .	6 00

On the 3d of November the governor, James Garrard, issued his proclamation for assembling the legislature on Monday, the 27th *instant*; alleging "an extraordinary occasion," though specifying no object whatever.

An anonymous writer in one of the public gazettes, suggested, rather waggishly, both the governor and his secretary being ex-ministers of the gospel, as a cabinet secret, that the object was to put a stop to the vice of gaming, which had become too prevalent.

But the session being formed, the "occasion" was found to have grown out of the approaching expiration of the act entitled "An act to repeal an act entitled 'An act concerning entries and surveys on the western waters.'" Which had been frequently continued: but omitted at the last session. The act passed upon this call, was the last enacted upon that subject. It gave ten months from the last day of the November

then present, for owners of entries to survey the same—and twelve months to return plats and certificates to the register's office.

An act of appropriation passed—and the general assembly adjourned; without altering the day to which they stood adjourned at the last preceding session. So that they were to meet again in January then ensuing.

In the mean time the transactions of this year will be closed, by bringing into view a very brief sketch of the state of the union in relation to France; extracted from the president's message of the 23d November, 1797. The three American envoys assembling in Holland, had proceeded to Paris, in France; whatever might be the result of the mission, nothing, he added, had been omitted on his part, to conduct the negotiation to a successful conclusion.

In the mean time, he said, nothing will contribute so much to the preservation of peace, and the attainment of justice, as manifestations of unanimity and energy.

The cautionary measures recommended at the last session continue necessary.

Permanent order or tranquillity cannot soon be restored in Europe.

Commerce is necessary to the United States, cannot be abandoned—must be protected. Agriculture, the fisheries, arts, and manufactures, depend upon commerce.

He had hoped the treaty with Spain would have been duly executed; but by the last accounts, Spanish garrisons, were continued on our territory—nor had the running of the line been commenced. Further communications on the subject suggested—the rest seems foreign to Kentucky.

On the 1st day of January, 1798, the general assembly convened in Frankfort; and on the 2d, the governor made his communications, on subjects of local policy: referring to communications made at the recent session, he does not even squint at the affairs of the nation.

A statement of the votes taken, for and against a convention, the most authentic probably that could be obtained; (for the



proceedings seem to have been very irregular;) represented the whole number of voters, to have been, nine thousand eight hundred and fourteen—and that of this number, five thousand four hundred and forty-six, were for a convention.

The following exhibit, being the detailed statement previously referred to, will shew that the voters were actuated from local, or incidental impulses; and not from any general principle, or perception of error, in the constitution; which they desired to correct. See the detailed statement below:

Counties.	Whole No. of Votes.	For Conven- tion.	Against Con- vention.
1. Bourbon . . . . .	1113	833	105
2. Bullitt . . . . .	247	10	1
3. Campbell . . . . .	876	188	88
4. Clark . . . . .	610	481	15
5. Fayette . . . . .	813	560	—
6. Franklin . . . . .	449	61	—
7. Greene . . . . .	—	—	—
8. Hardin . . . . .	135	124	—
9. Harrison . . . . .	—	—	—
10. Jefferson . . . . .	373	119	21
11. Lincoln . . . . .	—	53	102
12. Logan . . . . .	—	172	—
13. Madison . . . . .	1155	975	—
14. Mason . . . . .	800	300	—
15. Mercer . . . . .	—	—	—
16. Montgomery . . . . .	707	482	—
17. Nelson . . . . .	455	144	9
18. Shelby . . . . .	481	315	35
19. Scott . . . . .	560	25	—
20. Woodford . . . . .	578	28	—
21. Washington . . . . .	462	376	64
Total,	9814	5446	440

Of the twenty-one counties in the state, at the time of the general election in May, 1797, there were five which made no return of the number of those who voted at the election: two of the five returned the number of those who voted for a convention; and although they were populous counties, one

returned fifty-three for, and one hundred and two against a convention; the other returned one hundred and seventy-two for, and none against: the constitution, not requiring in fact, that any should vote against the convention; or that any notice should be taken of such votes, if they did: a majority of the votes given in the state, being required, to authorize a convention.

General inferences deducible from the facts disclosed in the foregoing table of votes, in relation to popular opinion on this subject, may with propriety, be applied to such opinion on any other speculative subject. Popular opinion, in Bourbon county, appears to have been in favour of a convention, to reform the constitution, as eight hundred and thirty-three, is to one thousand one hundred and thirteen—that is, about one and one-third for, and one against a convention.

In Bullitt county, the whole number of votes is two hundred and forty-seven; of which, ten were for a convention; the proportion is, as one for, and about twenty-three against.

And so of the rest, with constantly varying results. But the people every where are the same kind of beings, taken in mass—have a common attachment to their rights and liberties; and in proportion to their individual possessions and prospects, are interested in the peace, liberty, and prosperity of the country. How does it happen then, it may be asked, that their opinions vary so much about their constitution, or fundamental act of government, upon which every thing is supposed to depend? There is much reason to believe, that the correct answer lies in this—

That the great mass of mankind in all countries, Kentucky not excepted, where, it is nevertheless contended, there is as much, if not more intelligence in this description of the population, and which excludes those extraordinarily endowed with mental gifts, as in any country; are in fact and in truth, incapable of acquiring from the means they possess, the information, as well as of making the investigations, and deductions which are demanded, in order to come to a right judgment.

The inevitable consequence is, that they are dependent upon others, comparatively a few, for their opinions, of such complicated subjects, as a constitution; and generally, of all public measures.

The opinions of the *many*, are therefore but the opinions of the *few*—and the opinions of these, are the combined results of personal character, and actual circumstances. Not only every county, but every neighbourhood, furnishes one, or more, who are free and fond, to propagate his, or their opinions. Some, who have formed correct opinions, and from benevolent motives—many more from vanity, ambition, opposition, avarice, or the desire of distinction, and of attaining office, honour, and emolument, propagate opinions, with a view to promote their several objects. Hence we have some well-informed men, and correct politicians, and hundreds, very ill-informed, but yet knowing more than the generality, become their preceptors—and intending to profit by their practice, they smell out the current, or bias of opinions, throw themselves into it for the time, float with it, court the people, that is, the great majority, and presently become their leader. The way is open, plain, and beaten. The streets of the capital, not more obvious. And without more detail, or description, this will account for the diversity of opinion among the people, on the subject of calling a convention, to alter the constitution.

It will be hereafter seen that with all the stimulation produced by the cry of aristocracy, &c. the constitutional majority of votes were not obtained from the people to authorize a convention—and that it was called upon a different principle—by those nevertheless, who *professing* to obey “the will of the people,” really followed their own; as demagogues generally do, in such a government.

To conclude the transactions of the year, it is stated, that the amount of revenue paid and due the treasury, was twenty-one thousand three hundred and seventeen pounds; including ten thousand and seventy-eight pounds, eighteen shillings and four pence, of unpaid balances. Available funds—eleven thou-

and two hundred and twenty-nine pounds, one shilling and eight pence.

Expenditures for the same year, as evidenced by the issue of auditors' warrants or orders on the treasury, eleven thousand two hundred and twenty-eight pounds, one shilling, and eight pence half-penny. Leaving the revenue deficient—even the members of the legislature, were unpaid; and taking certificates of the balances due, had to pledge them, for their personal expenses.

A state of things, by no means resulting from the inability of the country to pay; but partly from parsimony, or the love of popularity, which circumscribed taxation, with too close a hand—in part from the influence which the sheriffs, who were the collectors of the revenue, had in the elections, and the consequent indulgences which they received, as delinquents—but especially to the frequency, and extent of those delinquencies. They being but effects, in many cases, of those indulgences, with which the sheriff bought his popularity—but very often the result of his applying the public money to his own private uses.

Such were the consequences of rendering the sheriffs eligible by the people. Of which they become so sensible, that they surrendered the right, in forming the second constitution.

## CHAP. VI.

*Legislative proceedings—Penitentiary established—Reflections on it—Other acts of a public nature—State of affairs with France, and return of Pinkney and Marshall—effect in the United States—Opinions in Kentucky—The general election—Expression of public sentiment for and against Convention—Acts of congress called, the alien and sedition laws—Governor's speech—Breckenridge's resolutions, and other proceedings, &c. &c.*

[1798.] THE January session of 1798, will be memorable in the history of amelioration and reform in the legislation of Kentucky. The sentiment upon which that reform is predicated, had manifested itself and been spreading by insensible degrees among the people of the country, for some years. It was a sentiment of humanity, combined with liberality, which induced different philosophers, half a century before, to turn their eyes on the penal code of Europe and America; induced so to do by observations on its effects, which were but too sanguinary; and much the same in all parts of Christendom: having for its object, the annihilation, rather than the reformation, of the offender. Being by various writers taxed with impolicy, as well as with cruelty; it was proposed to be mitigated, by a system of reform, founded upon the principle, of proportioning punishments to their relative crimes. Of all those who took up the pen on this interesting subject, none handled it with a more truly philosophic spirit, than the Marquis of Bacaria; whose book on crimes and punishments, not only enlightened his own country, but extending its benign rays throughout the civilized world, became the first, it is believed, to make converts in the United States; where its principles have in a manner become predominant.

It was at this session that Kentucky adopted them, in an act entitled "An act to amend the penal laws of this commonwealth." Out of which grew the penitentiary system.

The penal code of every country, is doubtless, of the greatest importance to the peace, good order, and security, of the

community; and also to the safety of individual life, liberty, and property. The danger of relaxing old laws, and established customs, is, of going into the opposite extremes. This was obviously the case in Kentucky. It was not deemed sufficient, to substitute the penitentiary for the gallows; but it seemed as if it was intended to diminish the horror of committing some of the most atrocious crimes, such as, rape, and house burning, by reducing their punishment to confinement and labour—while nothing but murder in the first degree, was to be punished with death.

This was not all; the punishments prescribed were so moderate, as at once to render them *tolerable* in the mind of every man who had not higher motives than the fear of punishment, to guard him against the perpetration of crime. Even high treason, might be expiated by six years confinement—nor could its punishment be extended, to more than twelve years.

Murder in the first degree, was defined and limited, to a few particular species of that crime; and all other kinds of homicide were reduced to offences punishable in the penitentiary, for not less than five, nor more than eighteen years.

Rape, could be atoned for by four years confinement; which might at the discretion of the jury, be extended to twenty-one years.

Horse stealing, was punishable by confinement from two, to five years.

Grand larceny, the theft of any sum over four dollars was punished by confinement from one, to three years.

Petit larceny, might seclude the culprit, from six months to a year.

These are specimens. It is believed, that the system, although, erected upon correct principles, has mistaken, as to the higher crimes especially, both the justice, and the policy of punishment; and that the effect has been of a highly demoralizing tendency.

The misfortune is, that in popular government, when public sentiment is once corrupted, there is nothing to recover it, or bring it back to a just standard; for every energy of the go-

verning power becomes involved, and are moved, in the same vortex. While one species of relaxation contributes to another, as the lesser, run into the larger, streams.

The penitentiary was established, and has been built at the seat of government; where it is employed in the experiment of reclaiming adult culprits; who live in the society of each other; work moderately; are very decently clothed; abundantly fed upon wholesome coarse diet; and lodged on straw, with covering. Upon the whole, there is no doubt, that these penitentiary convicts, are better accommodated, than the army of the revolution very frequently were, for months at a time. And during the administration of the present governor, it was formally proposed, in one of his communications, that they should be educated, and further accommodated, at the public expense. Thus merging the detestation of crime, and the dread of punishment, in the sentiment of commiseration; not less fallacious in theory, than pernicious in its effects, upon the moral feelings and habits of the people.

This act, however, like most others of a continuing kind, has undergone various amendments, hereafter to be noticed.

An act to speed poor persons in their suits, seems not unworthy of observation, for its benevolence.

It provided, in effect, that if any person having cause of suit or action, should present himself, or herself, before a court, having jurisdiction over the subject, and satisfy such court that he, or she, was not able, from poverty, to institute and prosecute such suit, or cause of action, that it hence became the duty of the court to assign counsel to such poor person; and also the duty of the officers of the court, to issue process, and to execute it, each in his department, free of costs.

It appearing that persons going into the northwestern territory, or into the state of Tennessee, to practice law, were required to become residents for a year previous to commencing business—the legislature acting upon the principle of reciprocity, required of persons coming from either of those places, before they could be admitted to practice as an attorney, in any court, that he should first become a citizen, reside

twelve months in the state, and then procure a license in due form of law; subject to a penalty of fifty pounds for each offence, by breach of the law.

The several acts relative to the annual salaries of the civil officers of government, were reduced into one; and (payable quarterly) arranged in the following manner, viz:

To the governor, or chief magistrate, 400*l*.

To the judges of the court of appeals, each 200*l*.

To the judges of the district courts, each, 150*l*.

To the secretary, 200*l*.

To the treasurer, 250*l*.

To the auditor, 250*l*.

To the register, 250*l*.

To the attorney general, 100*l*.

To the attorneys of districts, each, 30*l*.

The justices of quarter session courts, were each to receive twelve shillings for every day they attended court.

The constitutionality of the act of this session, giving a representation of one member to the county of Garrard, and two to the county of Madison, is not perceived. The reverse seems obvious, when it is compared with the sixth section of the first article of the constitution; which determines the apportionment, and consequently the *number* of representatives, among the several counties, shall take place by law, at quinquennial periods: which of necessity, excludes all such partial acts of legislation, as that alluded to above.

Three acts were passed, authorizing as many wives, to sue their husbands for divorces, and on the alleged fact, of *desertion*, being found by a jury, the court was authorized to pronounce them respectively, divorced.

The Bethel academy, was established by an act of this session: it was placed under the direction of trustees, who were incorporated with ample powers, for its government; with the additional faculty of receiving by donation, purchase, or otherwise, lands, goods, or money, to any amount whatever.

Mason county was divided; whence proceeded the county of Fleming, to have effect from and after the 1st day of March,



1798; to be designated, and bounded in the following manner, to wit: "Run a line south from the court house of Mason county, to the north fork of Licking, thence up the north fork nine miles when reduced to a straight line; at this point make the beginning; thence a straight line to the mouth of the Flat fork of Johnson; thence to the mouth of Fleming a straight line, unless it strikes Fleming, in that case down Fleming to the mouth, and up Licking to the head thereof, and with the line of Montgomery county to the Virginia line; thence with said line to that branch of Sandy, which divides this state from the state of Virginia; thence down the said branch until it intersects a line drawn from the beginning as follows, to wit: from the beginning up the north fork to the head of the south fork thereof; thence with the dividing ridge between the waters of Licking and Ohio until it strikes the waters of Sandy, thence down such branch east to Sandy."

An act to amend and revise the act entitled "An act for encouraging and granting relief to settlers," passed, to bring into one view, the provisions of an act of the last year which had been mistaken, or abused; or fell short of its object. It was therefore enacted, that any widow or any free male person above the age of eighteen years, and every free person having a family, who shall have settled, or who may settle himself or herself on any vacant land, on the south side of Green river, on or before the first day of July next, clear and fence two acres of land, and tend the same in corn, shall be entitled to two, and not less than one hundred acres of land, to include the settlement in any part of the survey, as expressed in the entry. Commissioners to be appointed to adjust the claims. The price of first rate land was set at sixty dollars per hundred acres; and inferior lands, at forty dollars, for the like quantity; to be paid within one year, subject to a forfeiture of the land, in case of failure. Many provisions and details relative to this and the former act, were introduced; and which have furnished subjects for a whole system of legislation, from that time to this, nor can any man tell when it will end; as already mentioned.

The commissioners and their clerk, each to receive two dollars per day for travelling and attendance; to raise a fund for which, each person to whom a claim was granted, had to pay one dollar.

This act was extended to fourteen sections, and covered six pages octavo.

One hundred and two acts passed this session, many of which are of the kind called revised laws—as coming from the hands of appointed revisers.

Among them may be noticed “An act for reforming the method of proceeding in writs of right.” Its object was the trial of disputed titles to lands in a more simple mode than that formerly used; and was extended expressly to claimants in fee simple. Under this act, it has been decided and held by the court of appeals, that to consummate a fee simple estate in land, the claimant should not only have the grant of the commonwealth, under the land laws, but that he should have been in the actual possession and occupancy of the land itself. While the supreme court of the United States have decided in a similar case, that the grant was a complete title in fee simple. Which it is confessed, seems the better opinion.

This essential variance did not take place between these tribunals, until a much later period; and after the country had become extremely harassed with law suits about lands; when a resort to the writ of right, as one privileged by the statute of limitations of actions, was likely to open new sources of litigation, particularly affecting the occupants of the soil, who in such cases were to be the defendants, wherever they were proprietors; which was generally the fact. And who by the time alluded to, had excited so general a sympathy throughout the country, and in whose favour the decision of the Kentucky court would so decidedly operate, that it made no clamour, nor produced any legislative inquiry; although it struck a blow at the titles to real property, of the most fatal kind; had the court been consistent, and applied the principle of their decision uniformly, to all other cases depending on the previous consummation of title. This however does not seem

to have been the intention of the court, since their decision appears to have been limited, to the suppression of the writ of right in the state courts; while it is in full operation in the court of the United States. An unfortunate state of things; since it presents two rules, by which the real property of the country is held; one applicable to citizens of the state, and the other, to citizens of any other of the United States.

"An act reducing into one the several acts concerning servants," very considerably mitigated the former rigour of their legal condition.

Good treatment of the servant is enjoined upon the master; and all contracts between the two, positively forbidden.

The execution of the law is placed under the jurisdiction of the county courts; who are authorized to admonish the master for ill treatment; and if persisted in, to discharge the servant. On the other hand, moderate chastisement, by stripes, is not considered ill treatment. White, black, and mulatto, being free, but reduced to servitude, are recognised in the law. There is, however, a general prohibition upon all negroes, mulattoes, and Indians, against purchasing servants, other than of their own complexion.

An act, altering the time for the meeting of the general assembly, fixing its future annual sessions to the first Monday of November, was passed; and so was

"An act to divorce Elizabeth Jones," if it should appear by the finding of a jury, that her husband had deserted her, and lived in open adultery with another woman.

In the case of John Funk, it appears that the legislature took upon itself, the office of both jury and judge; giving to their act the full effect of a judgment, in which they pronounce the divorce, at his instance, absolutely, and finally.

By an act of this session, jailors were required to receive, and safely keep prisoners, committed under the authority of the United States—provided that the United States do pay fifty cents per month in each case, for the use of the jail, and moreover, support the prisoner.

An act respecting delinquent sheriffs, shews, from its provisions, much difficulty in collecting money from them by execution.

An act for regulating the solemnization of marriage, makes it indispensably necessary to obtain a license from the clerk of the court of the county in which the female usually resides. The clerk to be assured, that she is of full age, is a widow, or has the consent of her parent or guardian; and furthermore, to take bond and security of the man, that there is no lawful cause to obstruct the proposed marriage.

There is however, a clause in favour of Quakers and Menonists, who are permitted publicly to solemnize marriage, according to their own rites, without license.

There is a clause confirming marriages celebrated by magistrates, or otherwise informally, where they have been consummated.

Marriages within the prohibited degrees, declared void; and power given to the district and quarter session courts, to annul them; upon an indictment and conviction.

Any *feme sole* of the age of twelve, and under sixteen years of age, marrying without the consent of her father or guardian, forfeits all her inheritance, to her next of kin.

There is some difficulty in accounting for this exotic shoot's being ingrafted into this act.

It certainly does not comport with the mitigated state of the penal code, if it even be constitutional. A severe penalty on the man who should marry her, were it to equal all the estate he received by her, might operate an equal restraint on him, whence the action must be supposed to commence; while it would punish both, but leave to her, the real estate which she should inherit.

It may indeed be shewn, to outrage the fifteenth section of the twelfth article of the constitution; which among other things declares, "that excessive fines shall not be imposed, nor cruel punishments inflicted." But it would be *excessive* and *cruel*, to take ALL, be that little or much, from a female of tender years, who might commit so natural an act as matrimony;

and that too, for aught that appears, with all the prudence of twenty-five, save the attainment, of previous consent; when even a subsequent assent, could not mitigate the rigour of the sentence.

Nor is the objection to the law obviated, by the remark, that if the wife should outlive the husband, she may re-enter into the forfeited estate: for in the interim she is bereft, and the estate may be wasted.

An act endowing certain seminaries of learning, passed at this session, which bestowed six thousand acres of land on each; to wit: the Kentucky academy—Franklin academy—Salem academy and Bethel academy: also the like quantity to the Lexington seminary—and its equivalent to the Jefferson seminary.

Surveying on Virginia military warrants not located before the 1st of May, 1792, prohibited under the penalty of five hundred dollars; and other precautions taken to suppress the practice.

Other acts passed at this session, partaking of the character of private, local, general, and corporate; some authorizing lotteries—some for regulating towns, roads, ferries, and inspections—others touching conveyances—and several empowering persons to sell lands the title of which, was in other persons; besides all the rest, necessary to make up the number mentioned.

The bill for taking the sense of the people for and against a convention was rejected in the senate.

There were various discussions, in the public newspapers, and elsewhere, in relation to the convention; the calling of which, was urged on the people; and, notwithstanding there was no law for it, they were strenuously urged to vote for one at the election in May. It was then, as it probably always will be, on similar occasions, when the existing state of things, which offer tolerable security, to life, liberty, and property, is to be, committed for amendment, to those, who may emerge from the crowd, on the occasion. A menacing voice, had been whispering in the regions of popularity, stimulated by some with, and others without sinister design, against slave holding, land holding, and money holding, in too great quantities by

*some people*—while the term, aristocrat, &c. &c. had frequently broke upon the ear with portentous sound. These circumstances had attracted attention and could but give some uneasiness to those who had a larger portion of property than the generality of their neighbours; as they necessarily must always be in a small minority, on the question, shall we make an equal division?

The emancipation of slaves was not an uncommon topic—while it had some open advocates; and of course, as open opponents. But the more adroit politicians among those who favoured the call of a convention, talked of “the aristocratic senate,” who were in office for four years, and who during that time, could fill occasional vacancies in its own body; and who felt itself independent of the people; and could, besides, elect its own speaker, who might in the event of the governor’s absence or inability to act, become the acting executive. And this was represented, as depriving the people of important rights, which for their own safety they ought to hold and exercise. Forgetting to state to them, that the senate, were as much the creatures of the constitution, as the house of representatives, itself—though not subject to be remoulded quite so often by the people. Who very prudently, in a prudent moment, knowing that government, to be wise, must be steady; and to be so, must have some place to rest on; some department not to be blown down annually by the popular breath; nor even pulled down at the frown of demagogues; had, to accomplish this desideratum, agreed to choose their senate and governor, by electors; who, chosen by themselves, and possessed of their feelings, and desires, with more information, would make a better choice than themselves—while the four years continuance in office, gave them some little idea of a momentary independence. That even when the senate filled a vacancy in its own body, it but acted as the organ of the people, who by the constitution had authorized them to make the choice. In truth, every power in every department of the government, proceeded from, and resolved itself into the great body of the people. The senate, interested with the people, but in a higher degree, as having more at stake

as men, in the general prosperity of the country; and knowing that at the end of four years, its members became mere citizens, and could become senators again, only, with the approbation of the people, expressed by electors, chosen for the purpose by the people themselves, felt really more dependence than was compatible with its duty. To talk of an aristocratic senate, was an absurdity, a solecism—there was nothing which the term fitted, or could with propriety be applied to. And yet, perhaps, it was not the less operative on those for whom it was intended, than if it had been applicable, and appropriate.

In April, a writer, of very respectable abilities, who adopted the significant signature of, GRACCHUS, addressed the question, "SHALL THERE BE A CONVENTION?" to the citizens of Kentucky.

Representing to them, that now was the time for them to act, or lose forever the chance of having a convention to revise their constitution. That six or eight individuals, composing a majority of the senate, had rejected a bill for referring the question to them, whether they were for a convention or not; although passed by a large majority of their immediate representatives. From the past they were to judge of the future. The legislative body had discovered too early a jealousy of the will of the people. Their immediate representatives had declared there was a majority in favour of a convention; yet, six or eight individuals in the senate have declared otherwise: thus are you controlled by a few men, a small minority, under the present constitution. The judgment of the senate is warped by their situation. The house of representatives feel and know they are the people's representatives; they fear not a convention; they know it will be but a house of representatives of the people.

But whence is it that your GREAT MEN are thus jealous of the power of the people? Does it not indicate something rotten in the situation of your country? Are you sure your liberties are not in danger? Your constitution, which attempts to arrest the progress of the human mind, will be perpetual unless corrected now. These men may for a moment suspend reformation, and bring on revolution.

Those opposed to a convention say, you are free from oppression; that your rights are secured under the present constitution; that any change is unnecessary, and hazardous; that before you feel an injury, you cannot so well devise, or apply a remedy; that in attempting to amend hap-hazard, there is danger that the constitution will be made worse. And what does this mean, but that you are ignorant, and besotted? Well may you blush to find a man among you so destitute of genuine republicanism, as to suggest such degrading ideas.

Another alarm has for its foundation, a fear for the safety and independence of the courts; as if the convention cannot amend a part without overturning the whole of the constitution. Are you frightened at phantoms?—At another time you hear it alleged, that the friends of a convention are for *agrarian laws*. But you would be the idiots they take you to be, were you to be frightened by suggestions like these.

Discard those insinuations which would make you think meanly of yourselves. And whilst you are told that you are about to strip the GREAT of their *property*, be careful that they do not strip you of your *power*. Remember that all power is in you, THE PEOPLE—that your present constitution admits this at the present, but robs you of it forever hereafter. As, if you have not a convention now, it will rest with two-thirds of the legislature, to say, whether you in future shall have one or not. Then, act for yourselves; act like men; write, FOR A CONVENTION, on your election tickets, in characters too plain to be overlooked by the attending officers; and thus declare your will, with an unanimity that shall appal the patrons of *aristocracy*, by the conviction, that "*the will of the people is the supreme law.*"

Thus, omitting many exaggerating circumstances, is the substance of one of the most decent, and probably best written papers, in favour of convention, given. While it is but declamation, and a false exhibition of the case.

The country became a good deal agitated; and at the election of members to the legislature, voted, both for, and against a convention. The result, however, did not shew what was



required by the constitution, that a majority of actual voters, had, given their voice for it; many counties failing to make returns: while it was certain that a large portion of those entitled to vote had not even attended the election.

The envoys of the United States to France, in the interim, being refused a public reception, insulted by antechamber conferences, and inadmissible propositions; after discussing all the points of differences on paper, and making known the American rights and claims; were about to depart from Paris, when Mr. Gerry was selected by the French cabinet, and requested to remain.—The other two returned to the United States.

Whence the prospects of war, with France were the more increased.

And what must ever remain inexplicable, except on party feelings; all insults, injuries, and contempts, heaped upon the United States, by the *actual government of France*, from time to time, could not divert the gratitude, due Louis XVI. although murdered, his throne prostrated, his government effaced; and a new species of despotism, more abominable, because more tyrannical and bloody, than had previously been known, established in its place: yet were there citizens of the United States, and Kentucky had her full proportion, who professed to feel too much indebted to France, to be willing to resent these injuries and insults—notwithstanding they unequivocally menaced their liberty, the independence of their own country, and government, and were actually extended to the most wanton and unjust aggressions on the commerce of the United States.

In relation to this subject, three opinions, or propositions were propagated in Kentucky, with a very general reception, and belief.

1st. That the government of the United States was quite in the wrong to resist France.

2d. That France if not quite right, was at least excusable, for her depredation on the commerce of the United States, as she was a *republic*, and at war to maintain her rights, and exterminate monarchies: and

3d. That the government of Great Britain was the most corrupt on earth; that if it was not conquered by France which was much desired, its fall with its own weight of debt, and excess of depravity, was all but inevitable.

Opinions, calculated to unnerve the arm of America, just raised in defence of her own rights, most injuriously assailed and abused, by France.

An author who signed *ARISTIDES* to his productions, written with temper and gravity, furnishes the following extracts—

"Every friend to American liberty before he can raise his arm to shed the blood of his fellow man, will seriously inquire into the matter of provocation." &c. "A faithful review of the conduct of the American administration, towards the republic of France from the commencement of the struggles for liberty, will unfold the truth more effectually than the noisy declamation of British adherents. It will perhaps be discovered that the balance of justice inclines to France." &c.

"The important question is, whether under all the circumstances of the controversy with France you will be justifiable before God and man in drawing your swords and drenching them in the blood of those who surrounded by enemies, are justly struggling for liberty."

"It must be difficult for a grateful American to forget the eventful occurrences of that revolution which has given birth to the present conflict for liberty in Europe."

"Happy for mankind, there is a part of the citizens of this once boasted land of liberty, who could say in an appeal to God, that they verily believe a war with France at present would be impolitic, unjust, and ungrateful," &c. &c.

The foregoing extracts, are from a publication of June.

In August, the country was greatly agitated, in consequence of the passage of the alien and sedition laws, by congress.

Many meetings of the people, were held in different parts of the state, on this occasion; and probably they were never more unanimous, than in the condemnation of those laws. Never failing to express great attachment to the constitution of

the United States—the formula being in that wise—and almost as uniformly deprecating a war with France, and expressing their abhorrence of an alliance, offensive and defensive, with the rotten, or the tottering monarchy of Great Britain. While in reality, no idea of the latter was indicated by government, or its friends.

In the mean time the election had taken place, and the citizens who chose to do so, had expressed their opinions for and against a convention. The following table will shew the result.

*A schedule of the votes returned to the office of the Secretary of the Commonwealth.*

Counties.	Whole No. of Votes.	For Conven- tion.	Against Con- vention.
1. Bourbon . . . . .	1673	1280	193
2. Bracken . . . . .	—	—	—
3. Bullitt . . . . .	187	141	5
4. Campbell . . . . .	286	83	195
5. Clark . . . . .	799	755	6
6. Fleming . . . . .	—	483	33
7. Fayette . . . . .	2247	1357	622
8. Franklin . . . . .	—	—	—
9. Garrard . . . . .	644	281	358
10. Greene . . . . .	55	432	12
11. Hardin . . . . .	—	—	—
12. Harrison . . . . .	—	408	30
13. Jefferson . . . . .	690	505	22
14. Lincoln . . . . .	—	—	—
15. Logan . . . . .	—	—	—
16. Madison . . . . .	951	907	1
17. Mason . . . . .	—	—	—
18. Mercer . . . . .	894	532	235
19. Montgomery . . . . .	786	762	3
20. Nelson . . . . .	912	242	42
21. Scott . . . . .	1012	303	—
22. Shelby . . . . .	727	333	260
23. Washington . . . . .	—	—	—
24. Woodford . . . . .	—	—	—
Total,	11853	8804	—

This exhibit, like that of 1787 of the same kind, will be found equally defective. The whole number of votes given, is not so great in the first as in the second experiment—while in other respects it corroborates the reflections, and deductions derived from that, as to the formation of public opinion, or, as it is called, “the will of the people.” As the people improve their intellectual faculties, and extend the sphere of their researches, and the acquisition of information to their true sources, public documents, and genuine history, so as to comprehend what they read, and to form just conceptions of public measures; they will then, and not till then, be free from the impositions of spurious politicians; the never failing productions of popular governments. The evils of which are to be borne, until the people, from the accumulation of knowledge, or the sad effects of experience, shall be willing to admit into the constitution of government, those real checks, which, founded on human nature, and having their existence in the very structure of society, demand a protection, in the legislature, for the rights of individual property, equal to its security, from legislative violence: which it is deliberately believed can never take place, until those who have it are invested with its guardianship, by a legislative *veto*. This, were the people willing, or perhaps, it should be said, “their demagogues;” to assign one branch of the legislature, *to those who have property*; making land, in some fixed quantity, so as nearly to divide population equally, the criterion; and the other, to those of the citizens, as at present qualified, to vote; might be done, to the benefit of all. Upon this plan, no man would be deprived of his equal right of suffrage—while the two great classes of the community, those with much and those with little or no property, with all the intermediate degrees, on the one side, and on the other, would have his own immediate *interest* under the representative care of those who from similarity of condition, feeling, and principle, would possess a common sympathy. Thus, each party as the senate, and house of representatives, invested with equal powers, and armed with reci-

procal negatives, would live in harmony; because they would each be free from apprehensions of encroachments, from the other. But if at any time a hostile essay should be attempted, the simple application of the "nay," would bring it to its end, innoxious.

It is believed, that this suggestion, springing from the most serious reflections, on the scenes exhibited in the history of Kentucky, no less than in those of other countries, merits the most profound investigation. Will, it may be asked, men never profit by experience? Had they rather be miserable themselves; than consent to make others happy? Why should not citizens of the same republic, mutually improve the condition of each other? and thus enhance the value, of free government?

This history, in its progress, approaches a change in the constitution of the country, springing essentially from a cause inherent in democracy; it is the source of some virtues, and of great vices—it is a spirit of *jealousy*, commixed with *envy*, in the less informed, and less accommodated, portion of society, of those whom they view, and consider, as more fortunate, or better furnished, than themselves. It is not a spirit of improvement. Nor can any country realize its full resources, under its preponderance. Its tendency is to pull down, not to elevate—to deteriorate, not to improve.

But feeling no desire to be thought oracular, the narrative will be resumed.

The November session of 1798, commenced on the first Monday in the month—was rendered memorable, by its proceedings in relation to the general government. The two acts of congress already noticed, under the popular epithets of, alien and sedition laws, had been the subjects of much censure, misrepresentation, and even virulence. The object of the first was to give the president of the United States the control over suspected aliens—that of the latter, to suppress libels against the government, the president, either branch of the legislature; and combinations of seditious persons, &c.; things which more than any others, were directly opposed to the

party views of the domestic enemies of the American administration. The agents of France were notorious, and active; while libelling the president and congress, were among the practised means of the party, for rendering them unpopular. Nothing could therefore give more umbrage, than laws adapted to suppress the influence of French emissaries, and printed falsehoods. The opposition was in proportion.

The governor of the commonwealth, in his communications to the legislative body, in adverting to these acts of congress, remarked that they had "created an uncommon agitation of mind among the citizens of the state." He then proceeded to denounce them as unconstitutional, and dangerous to public liberty; as if these consisted in the protection of foreign emissaries, the publications of falsehood, and combinations to break the peace!

On the 8th of the month, Mr. John Breckenridge, an influential member from Fayette, introduced into the house of representatives, a concatenation of resolutions, with no little ostentation, on the subject of these proscribed laws; as it were, to enlarge and elucidate the ideas of the governor. And as they were adopted by the general assembly, they are thought worthy of further observation. The first will be inserted—the rest merely referred to in gross.

"1st. *Resolved*, That the several states composing the United States of America, are not united on the principle of unlimited submission to their general government; but that by compact under the style and title of, a constitution for the United States, and of amendments thereto, they constituted a general government, for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: that to this compact, each state acceded, as a state, and is an integral party; its co-states forming as to itself, the other party: that the government created by this compact, was not made the exclusive or final judge of the extent

of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress."

A few observations will be hazarded on the matters contained in this resolution, as is the course of this history, regarding truth, and reason, as their only guides.—The other seven, and an eighth, requiring the governor to send out copies to congress, and to the state legislatures, being equally wise, and occupying a proportionate space with the first, may be judged of by the laconick analysis, which their *primary* will receive. Of that it may be said, it is the summary of anti-federalism. It is a misconception of the facts, and a perversion of the principles on which the constitution of the United States was framed, and adopted. It is a theory of error, conducing to mischievous practice; which merits a check.

Among other things, deserving attention, and the first that will be particularly noticed, is, that the resolution asserts in effect, "that the constitution of the United States, was a compact between the states, as states, for special purposes." That the first part of this proposition is not true in fact, will appear from the declaration at the head of the constitution itself—which is, that, "We, the PEOPLE of the United States," &c. concluding with, "do ordain and establish this constitution, for the United States of America." Denying also the latter part of the same proposition to be true, "that it were for special purposes the constitution was made." No: they were general purposes, requiring *plenary* sovereignty to carry them into effect. And to this purpose, the constitution, whether made by the states, or the people, amply provides, in declaring, "that congress shall have power, to make all laws which shall be necessary and proper for carrying into execution, the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department, or officer thereof." And in providing that "this con-

stitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the *supreme law of the land*, and the *judges in every state* shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." To this may be added, the requisition, that "the senators, and representatives, (in congress,) before mentioned, and *the members of the several state legislatures*, and all executive and judicial officers, both of the United States and of the *several states*, shall be bound by oath or affirmation, to support this constitution."

One other clause only need be exhibited, to prove the utter futility of the proposition of Mr. Breckenridge, under consideration. It follows:

"The judicial power (of the United States) shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, or other public ministers, and consuls; to all cases of admiralty, and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, and between a state, or citizens thereof, and foreign states, citizens, or subjects."

While to give at once, and in connexion, a more distinct view of the objects for which the government of the United States was instituted, recurrence will still be had to the constitution, and further quotations made; in order to shew the reader, a catalogue of the declared powers of congress—which in effect are so many renunciations of state powers—as well as a like catalogue of powers expressly prohibited to the states. Thus it is provided in the eighth section:

"The congress shall have power—

"1st. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence, and general welfare of the United States: but all duties, imposts, and excises, shall be uniform throughout the United States.



"2d. To borrow money on the credit of the United States.

"3d. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

"4th. To establish an uniform rule of naturalization; and uniform laws on the subject of bankruptcies, throughout the United States.

"5th. To coin money; to regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

"6th. To provide for the punishment of counterfeiting the securities and current coin of the United States.

"7th. To establish postoffices and post roads.

"8th. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

"9th. To constitute tribunals inferior to the supreme court.

"10th. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

"11th. To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water.

"12th. To raise and support armies. But no appropriation of money for that use, shall be for a longer term than two years.

"13th. To provide and maintain a navy.

"14th. To make rules for the government and regulation of the land and naval forces.

"15th. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

"16th. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

"17th. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United

States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and,

"18th. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or any department or officer thereof."

The ninth section is restrictive and explanatory.

"1st. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight; but a tax may be imposed on such importation, not exceeding ten dollars for each person.

"2d. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

"3d. No bill of attainder or ex post facto law shall be passed.

"4th. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

"5th. No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state, over those of another: nor shall vessels, bound to or from one state, be obliged to enter, clear, or pay duties in another.

"6th. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

"7th. No title of nobility shall be granted by the United States: And no person, holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title, of any kind whatever from any king, prince, or foreign state."

The tenth section is expressly prohibitory on state powers, whereby they are so far renounced, and not to be exercised by the states.

"1st. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

"2d. No state shall without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties, and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty on tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

From these sections, no doubt can exist in the mind of any intelligent man, of the superiority of the government of the United States, over the state governments; in all those enumerated particulars, and the necessary inferences from them. It therefore follows as a corollary, that to the same extent the state governments are *inferior*. That in fact, plenary, or full, state sovereignty, or independence, cannot exist, under the constitution of the United States—and that the propagation of the assertion of unqualified STATE SOVEREIGNTY, is a gross error of pernicious consequence.

The truth is, that the only just criterion of power between the government of the United States, on the one hand, and of the several states, on the other, is to be found in the constitution of the former, to which all are parties; and not in those of the latter, to which the citizens of each state are the separate, and exclusive party.

The argument used in the resolution, against the general government's possessing the right of judging in the last resort, namely, "since that would have made its discretion, and not

the constitution, the measure of its powers,"—is as futile, as the arrogance is conspicuous, in assuming for each state the right of final judgment. If the government of all could not be trusted with the final judgment, which was to affect all; what superior safety was to be derived from the final judgment of one, or of each of the parts? If in the case of the general government, there was danger of the judges, substituting their discretion for the constitution; what was to hinder the state judges from doing the same thing? Or what was there in them, or their office, to prevent their dispensing with both discretion, and the constitution? It is however, enough to shew as to that, the argument is without premises—or a perfect *non consequent*. Therefore, without more said as to this point—but referring to the constitution as the text, of all correct commentary, it is to be further said, that from the quoted provisions in the constitution, there seems to result by unavoidable inference, a conclusion, which utterly overthrows the whole theory of the Kentucky resolutions. The assumption, that the constitution of the United States is a compact between co-states, is contradicted by the constitution; which shews by express declaration, that it has its origin in, and derivation from, the only legitimate source of power, THE PEOPLE; and that it stands on the broad basis of the population of the United States, exactly upon the same principles, as to the objects, and extent, of its powers, as do the state constitutions, on the *people* of the several states. And were this idea realized, and justly appreciated, it would necessarily correct an infinitude of misconceptions, and erroneous representations, which seem still to take place from time to time.

It would hence be admitted, that the people of the United States were as capable of forming a constitution of government for themselves, as those in each state were of forming state constitutions. It could but be admitted also, that the whole was *equal* to all its parts; and *superior* to any one of those parts, taken separately. That in fact, the people of the United States, having made a constitution of government, for the great purpose of union, were competent to embrace within its

sphere of action, all those objects, which are essential to union; being those primarily, which appertain to external relations, and internal intercourse between the states, and their citizens; who at the same time are the citizens of the United States; and which could in no degree be regulated by the states separately, but by means of diplomatic agencies; nor by such agencies, but as foreign, often rival, if not hostile, nations; a state of things, utterly repugnant to union. To give effect to these great national objects, it became indispensable, that such points of state sovereignty, as were incompatible, with such objects, should be *surrendered*; they were *SURRENDERED*, and with them, that part of the public force, or in other words, legislative power, as might be necessary among other things to protect from violence, and from slander, such public organs, as should at any time be employed in their effectuation. This is the language of common sense; of sound policy, resulting from correct morals, and a correspondent perception of national justice. What shall every state possess, as a part of its legal code, and of its legislative functions, the power of subjecting libellers, and slanderers, of their legislature, executive, and judiciary, to legal coercion, in its own courts; and shall not the United States, have a similar right in relation to their correspondent departments? Was it not known, that the fairest and most virtuous characters, were subject to be injured by misrepresentation, and traduction? If Washington could not escape the libeller, or the injurious effects of such publications, who may ever expect to escape them? And is it to be believed, that the individual holding the office of president of the United States, in order, to vindicate his conduct, and character, assailed merely on account of his office, was to go into the court of a particular state, because he could not find redress in the courts of the United States? and that congress was incompetent by law to give the United States courts, jurisdiction over, or in such cases?—that the representative, and executive, organs of the general government, could do in their proper department, every thing appertaining to peace, or war; raise armies; build navies; regulate commerce; impose taxes,

imposts, and excises—that the people had by the constitution intrusted to congress all these powers; but that so sacred, and so precious, were the *characters of libellers*, that they reserved to the several states, the exclusive jurisdiction of them; *notwithstanding congress is vested with full power to pass all laws necessary and proper to carry into execution the foregoing delineated powers, &c.* Such is the argument in detail, upon which the resolutions are supported. The constitution is, as it has been quoted, against it. The plain common sense of mankind, when liberated from party passion, must be against it, also.

But what further says the resolution? It says, *that the government of the United States does not contain, the right of final judgment—but that the states being the integral parties to the constitution, each has the right of judging for itself.* Verily, it is difficult to conceive a proposition more pregnant with absurdity. The total fallacy of the idea, that the constitution was made by the states, *as states*, has already been demonstrated, as it is believed: it has been shewn likewise, that the constitution and laws of the United States, &c. “are the *supreme laws of the land*,” that they are to be respected, and made the rule of decision in the courts of the several states, as well as of those of the United States. In pursuance of which the judicial act of the United States gives an appeal from the decision of the highest court in the state, where such decision is against the constitution, or law of the United States, &c.: thereby establishing in the most exact and ample manner, a refutation of the assertion advanced in the resolution, *that the United States have not the right, or the means, of final judgment.* Had this been true, the anti-federalists would have found in it an ample justification for their hostility to the constitution. A miserable idiotic, lunatic, paralytic, object, it would have been. With an ostensible competency of organs, it could have done nothing without the approbation of the states. With a head, it could not have moved its limbs—with limbs, it could not have moved its body: in short, it would have been the thing, its enemies wanted it to be, a football, for state demagogues to kick about at pleasure. Suppose it were true, as stated in the resolution, *that each state*

*has an equal right, having no common judge, to judge for itself, as well of infractions, as of the mode and measure of redress.* A more effectual charter, for anarchy, confusion, or insurrection, can hardly be imagined. There were then fifteen states—there are now, twenty-four; while the number may yet be increased; and these having extensive intercourse, and a vast variety of discordant interests, affecting union—and yet, each, *the final judge of what concerned itself*, without a dernier resort, or common umpire! and what must have been the consequence? It will be left with the reader to answer the question—No, it is anticipated; anarchy, and disunion.

It is known, that even in congress, where the affairs of the union are directly discussed, with the most ample means of information, and where all should have in view the good of the whole, that nevertheless, the most important measures are generally decided by small majorities. What then if fifteen or twenty-four, independent uncommunicating states, with different degrees of information, and often opposite views, have the same questions before them; could any thing like a common result take place? He must be a novice in political science that could expect it. On the contrary, contradiction, and confusion would be the consequence; discord and war, would follow.

It is indeed, much to be regretted, that the constitution of the United States, cannot be seen by state politicians, and represented to the people, as it really is; *a government instituted by and for the whole people of the United States, for the purposes, and objects of the whole; in like manner, as state constitutions, are for state purposes.* That hence, those things which concern the whole United States, must necessarily take a higher order; move in a larger circle; a more elevated sphere, than those other matters which concern a state only. And this may be demonstrated, by the application of a circle which would include the largest state in the union, to the union itself; as it would instantly appear, to be less than the union: apply it to the state for which it was formed, and twenty-three, out of the twenty-four states, would be excluded. These premises, seem

to lay an ample ground work, for the *supremacy*, established in the constitution, and laws, of the United States, over the particular states; and for giving the right of *final judgment* to the general government, in all cases of controversy with a state, about its laws, affecting the constitution or laws of the United States. As well might a county court dispute the supremacy of its state government, as a state in the union, dispute the authority of the United States, when once finally settled in the constitutional mode. Let no state demagogue be alarmed—the remedy in the ultimate resort, is with the people, where he affects to place it on state occasions—but then they are the people of the United States, not of a particular state only, to whom the reference is to be made in this case; and they occupy too large a circumference for his comprehension—Ah! there, is the rub! he can manage a part, but not the whole.

As to the acts of congress which gave rise to the resolution which has drawn forth these commentaries—it is asserted as a clear proposition, that the government of the United States, has a full and perfect jurisdiction over free aliens—may forbid their admittance into the United States—and govern them if admitted, in such manner as they please; that their privileges here are by *courtesy*, not *constitutional right*; and that hence, the law as to them, in no manner violated the constitution.

The express power given to congress, “to regulate commerce,” embraces the subject of men imported, as well as of wine, hardware, or broadcloth; and congress had by the constitution, before 1808, except for the first section of the tenth article of that instrument; and since that time, that section notwithstanding, the right to prohibit the importation of aliens, as well as any of the other articles, of commerce.

It is true, the right to pass uniform laws on the subject of naturalization, implies the admission of free aliens. It certainly does not imply the admission of slaves, who could not become citizens; or else congress, might by law, set them all free.

While it is quite as clear, that the clause of the constitution, to which reference has been made, has relation to those only



who might be imported as slaves—having no relation to free persons. The words are: “The migration or importation of such persons, as any of the states *now* existing shall think proper to admit, shall not be prohibited by the congress, prior to the year 1808,” &c. It is supposed, “migration,” which means “change of place,” and is applicable to removal from one country to another, from one state to another, and from one place to another, in the same state; is nevertheless in the constitution to be taken as the synonyme of “importation,” which means removing into, from some exterior point. Since to detach the two words, and give the first a meaning it will bear, it would imply that congress from the year 1808, has had the power, to prohibit the removal of slaves from one state into another. The importation into any state, was then an importation into the United States: while it is obvious, the prohibition on congress, by the words “now existing,” that is, when the constitution was made, never did extend, to any state since admitted into the union, ex-territorial, of the then United States. Upon this view of the constitution, the governor of Kentucky need not to have been so much alarmed, lest the president should stop the migration of aliens who were admitted into the United States, from coming to Kentucky; as he appears to have been, by his communications to the legislature.

To see and read what he said, will afford the best information on the subject. Speaking of the alien law, he said: “Nor can the same law be regarded as any thing less than an *artful, though effectual evasion* of the provisions of that article of the federal constitution which withholds from congress the power of prohibiting the migration, as well as importation of such persons as the states then existing might think proper to admit; a provision of the highest importance to those states whose population is not full, and who have the strongest interest in welcoming the industrious stranger from every part of the world.” This language from the governor, to the legislature, and he, one of the most enlightened and liberal men of the party, will afford a ground of inference as to the rest.

Upon what principle, it may be asked, did the president of the United States, in 1812 or '13, order all aliens in the United States, to remove forty miles from the seacoast? This was done without any act of congress. Craftily—for had such an act passed, it would have been an "alien law," by the party too, who so loudly condemned the former. The people might have seen the inconsistency—although indeed there was but little danger; since they could not discern, the greater encroachment on personal liberty, from the president's exercise of despotism, than if his acts of control over aliens, had been authorized by an act of congress, in whom the constitution had vested the directing power of the government, as to them.

It can hardly be considered, a departure from the subject under consideration, and certainly comports with one of the objects of this history, which is to give correct views of the constitution of the United States, so often mistaken and perverted, and always interesting to the people, should a brief analysis of the first principles of that instrument, be opposed to the misconceptions of Mr. Breckenridge, his followers, or fore-runners.

It is therefore said, that the constitution of the United States, is not only, *not a confederation of states*—but one formed by the people, in their sovereign character; as essentially and absolutely, as the introductory clause imports. And that it is as much, A REPRESENTATIVE DEMOCRACY, as the states are, which have been formed by separate portions of the same people. While a single observation, may give to this definition, the evidence of demonstration. The people qualified to elect the members of the most numerous branch of the state legislatures, are also qualified to choose representatives to congress.

Even the senators of the United States, are chosen by the state legislatures, emanating from the same people: While the president, and vice president, are chosen by electors, or the representatives in congress, each, and all of whom, are chosen by the same people.

Such is the constitution of the United States. It is, to all intents and purposes, "a popular government"—A REPUBLIC, in

its form and substance. Its judiciary, is constituted upon similar principles—its judges, hold their offices by the tenure of *good behaviour*—and may be turned out by impeachment, intrusted solely to the people's immediate representatives, and triable only, by the senate, their mediate representatives.

In the formation of the constitution, the election of the representatives in congress, and the choice of the president, is displayed, principles, and forms, entirely NATIONAL and CONSOLIDATORY. In the formation of the senate only, is the *federal* feature, exhibited: unless it may also be recognised in the house of representatives, in the choice of president, when that duty devolves on it. Both houses voting in all other cases, upon the broad *national* principle: It constitutes, a truly NATIONAL GOVERNMENT, called FEDERAL, for the sake of brevity, and as a substitute, for the confederation.

This delineation, appeals to the constitution, for its correctness, and challenges scrutiny. A more minute detail cannot be indulged here; while it yet remains to be remarked; that it should forever explode the futile and untenable theory, proposed in the resolution, and sustained by the vote of the Kentucky legislature. A consideration highly important, is next to be presented, for reflection: Are we to look to state constitutions, or to that of the United States; for the powers to be exercised under the latter? According to the doctrine here maintained, to the latter, only; that being national. must be coextensive with the nation—its effect being external, as well as internal, it must pervade, and comprehend, the whole. That there may be no redundancies, or incongruities, the superior must be impressed on the inferior—not the latter, on the former; and that impression, to be efficacious, must become the test of right, in removing every obstacle to its correct action: for while it operates, within its proper sphere, that is, within its constitutional orbit, it may have difficulties, but no impediments, from its parts, or other inferiors: such are the state governments, compared with that of the nation. The state governments have their orbits marked out, as they relate to the nation, by the national constitution. That is the criterion of their

rights, and the test of their powers, in every case of collision.—As however, the people in each state, are to act separately, in state affairs, while they have all, a common concern in the affairs of the nation; it is not to be supposed, that one should judge, and decide for the whole; but rather the whole for each one. Upon this principle, in all matters of controversy, between a state, and the nation, the latter prescribes the tribunal.

Upon this principle, harmony may be maintained, and the union preserved. Upon the principles advanced in the resolution, the very reverse would be the consequence.

But enough, as to that—the people are the parties to both; it is their business to superintend both, within their proper spheres of action. Nor is a better rule of judging perceived, than that contained in this simple proposition; does the measure in question concern our state and citizens only? Then it is under state control: but if it involves the rights or interests of other states, or their citizens; or foreign states, citizens, or subjects, then its ultimate resort for solution, is to the constitution, and tribunals of the nation.

States of the union, are essentially co-sovereigns, in relation to each other; but in comparison with the nation, they are *constitutional* sovereigns only—That is, *qualified* sovereigns. Does not that fill the pride, and qualify the ambition of state authorities? Then let them elevate their minds, and expand their views, to the superior orb, the nation. Let each reflect, that he is one of its citizens, and may become one of its immediate, as he is at the time, one of its secondary functionaries: and his heart should leap, and his soul exult, with joy and triumph, on the reflection. For what could a single state ever be, as to those circumstances, of internal safety, and happiness, of external influence, and renown, compared to the whole united? As an individual, “to an army with banners.” Then the nation, is my country—the state, my dwelling place. It is the rule of law, the administration of justice, the prosperity of the honest, the comfort of the industrious, the joy

of peace, and the smiles of social intercourse, which belong to union, and are by it ensured; if by men attainable, to the exclusion of contests, and wars; which should endear the union, to every American bosom. But if we would preserve union, we must cherish those sentiments which conduce to union, and to strengthen its ligatures.

The states have their distinct spheres of action, which it is the duty of their public functionaries to fill, and to guard—which demands of all, respect and observance. For although the constitution of the nation, comprehending the whole of the states, as to their more general concerns, necessarily moves in a larger circle, touching those things which concern the nation, and must therefore be greater than the several states; yet are the constitutional rights of these, in their corporate capacity, as sacred, and to be held as inviolable, as those of the nation. Are states limited sovereigns? So are the United States, a limited sovereign. The *plenary sovereignty*, is divided between them. The American politician, should understand this subject, in order to be able to see the line of partition, and hence to assign to each, its proper subjects. This is an important science, the acquisition of which, honestly reduced to practice, would prevent much idle, or vicious declamation, error, and folly.

The people of the United States, in framing and adopting the constitution of the United States, knew that they were reducing the power of the state governments. It was their intention to take from the state governments, as much power as was necessary to constitute the general government; and they inserted in the constitution the eighth and tenth sections of the first article, which have been exhibited; and adapted to these, various other declarations, and provisions, for the purpose of rendering the government operative, and efficient.

Incidental conflicts were foreseen; ultimate harmony was provided for. The government of the nation, was declared to be SUPREME. What else could it be? Nothing less, to be at all a government. The state governments; by a necessary

consequence, became *INFERIOR*; to the whole extent of the comparison. The terms, "superior," and "inferior," are correlative: the one does not exist, without the other.

But then their order, and rank, are established by the people; who made one, for the government of all, and the others, for the government of their respective parts. Taking care, as the great objects were union, peace, and happiness, to provide a tribunal, where controversy should be terminated. That is, *THE SUPREME COURT OF THE NATION*.

It is not to be understood, that all the ideas imbodyed in the resolution, which has been animadverted on, are erroneous: those which are mainly thought so, have been selected; and it is hoped sufficiently exposed, to render their fallacy apparent.

On the subject of legislation, a few general observations will be hazarded, previous to a more detailed, course of remark, upon the obnoxious act of congress; called, the sedition law.

In the first place, it seems to be admitted on all hands, that the state legislatures, have a right, at least, to pass a law, to punish slander, even, of its own body, of the executive, and of the courts; notwithstanding, they are inferior governments—in other words, "limited sovereigns." Nor does it seem to be questioned but that, this power in states, is no less fit and proper, to guard official reputation, than it is to guard private reputation; and that it is an essential part and parcel of the legislative power. Whence comes the right, it may be asked, of punishing contempts, by legislative bodies, even without express law for the purpose? Whence comes the right of preserving order, and enforcing silence, in the presence of those bodies? Certainly from the propriety, and necessity, of the thing; or it is an attribute of the legislative power, inherent in the body for its own protection, and the despatch of public business. It is admitted that the necessity which authorizes legislative bodies to punish, such as offend in their presence, is confined to such bodies—and it is their duty to extend by law, the power of self protection, to other public functionaries. It may be said, that the necessity which authorizes the legislative body to punish without express law, exists only until an act can

be passed for the purpose. Be it so, it will result nevertheless, that a *law* may be passed to the same effect; and by force of the legislative power: notwithstanding the abridged, and limited condition of the state legislatures.

The question may now be put to every intelligent, and candid reader; are not the public functionaries of the national government, to be protected from annoyance; and may not this protection, as well belong to the legislative power of congress, as to that of the states? and why not? An argument which shall not betray, its own absurdity, in attempting to support the distinction, is defied.

Would the people put the official organs of their superior government, under the sole protection of their inferior governments? The absurdity is too gross.

On the subject of the "sedition law," as it was called; the part which apparently gave the greatest offence, was that, which subjected to an action at law, "such persons as should write, print, utter, or publish, any false, scandalous, and malicious, *writing*, or *writings*, against the government of the United States, or the president of the United States, or either house of the congress of the United States, *with intent* to defame the said government, or either house of the said congress, or the said president, or to bring them, or either of them, into contempt or disrepute, or to excite against them, or either of them, the hatred of the good people of the United States," &c. And who being convicted, were to be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years. "*The person prosecuted, having always, the right, upon trial of the cause, to give in evidence, in his defence, the truth of the matter contained in the publication charged as a libel—while the jury who shall try the cause shall have a right to determine the law and the fact, under the direction of the court, as in other cases.*"

Nothing could probably proclaim more distinctly the intrinsic moral principles, of the party, than its opposition to this law, made against the publication of *written*, wilful, and malicious slander. The letter to Mazzie, the publications of

Freneau, Bache, Duane, and the book of Callender, countenanced, and supported, as they were, gave evidence to the same effect. The demonstration was now complete, that *lying* was held to be an indispensable means of effecting the great revolutionary purpose, the party had in view.

But, said the leaders, congress had no power to pass the law; it was unconstitutional, to bring those who should libel the government of the United States, the one or the other house of congress, or the president, into the courts of the United States; because the state governments, of their love and care of libellers, or of their peculiar grace and favour to the government of the United States, the two houses of congress, and of the president, have reserved to themselves the punishment of the first, and the protection of the good name and fame of the latter. It would seem that this simple exposure should be enough to evince the untenable nature, and real absurdity of the objection to the law, on constitutional grounds.

But besides the obvious propriety of punishing libellers of public functionaries; and the no less obvious impropriety, of subjecting those of the United States to the jurisdiction of each particular state; it requires only a necessary, and genuine construction of the constitution of the United States, to find ample powers vested in congress for passing the law in question. The party, which opposed, the constitution, to the law, having gotten into the possession of the government, find no difficulty now, in exercising *derivative*, or *constructive* powers. Hence they have incorporated a bank; appropriated money to the purpose of exploring routes for roads and canals, &c. &c.; and arrogate great merit to itself, for talking of internal improvements: for which if they can find express constitutional authority, it is believed to be, what no genuine federalist, ever found in the constitution; although they saw enough to justify, the passage of the sedition law.

But without claiming aid from error, a resort to the constitution will furnish a few elucidations, which will be presented, for consideration.



By what specific grant of power in the constitution, was the capitol, the president's house, or offices for the different departments, built, and rebuilt, within the city of Washington?—Where is the clause which authorized the levy, and appropriation of money, for these purposes? Yet federalists, and anti-federalists, have concurred in these acts. At least, the first, built; the second, *rebuilt*, after letting a squad of the enemy burn them down.

Is it answered, that they were necessary and proper for the protection, and convenient accommodation of official incumbents in the discharge of the duties, which they owed the public?—But are these necessary? Cannot these incumbents bear the annoyance of the weather, and can they bear the annoyance of libels, in the discharge of their public duties? To virtuous, and honourable men, the latter is more intolerable, than the former. If, verily, personal accommodation, or protection, enters into the purview of the constitution, which is admitted; then, protection of character, has the first place.

Character in public functionaries, is public property: the community are deeply interested in it; and especially, as it relates, to their government, and its essential component parts. In the president of the United States is vested all the rights of diplomacy; he sends and receives ministers, negotiates treaties, appoints consuls, &c. &c. besides those functions, which he performs in connexion with the legislature, in making laws; with the senate, in making appointments; and in seeing that the laws are faithfully executed. But if foreign courts believed what was said by the party writers of Presidents, Washington and Adams, it would be impossible to respect them: a similar consequence would follow a belief of such publications, by the people of the union; where a great portion are ignorant, and prone to believe what comes from those who are accustomed to instruct them.

That these are not mere speculations, the current publications of the times will most effectually demonstrate. Samples of which have been given: which will now be followed by a few more.

In relation to the president's calling out the militia to suppress the insurrection in the western part of Pennsylvania, Callender says: "Instead of this legal measure, President Washington walked straight through the constitution, through the privileges of the legislature, and the respective duties of his office." Again: "General Washington went to the treasury; some future president may go to the bank—the one step will not be a jot worse than the other." In another place, he says: "He was at the head of an army for seven years and an half, and was several times beaten—his fame as a conqueror, rests on the capture of nine hundred Hessians." Another instance: "If truth or reason, or the public service had been at all consulted, the house would have begun by asking the executive why, *he took from the treasury eleven hundred thousand dollars, without their leave, and in contempt of the constitution?*"

In another book, the same hireling proceeds: "He (Washington) could not have committed a more pure and net violation of his oath, or a grosser personal insult on the representatives." In another place he says: "By his own account Mr. Washington, was twice a *traitor*—he first renounced the king of England, and thereafter the old confederation. His farewell paper contains a variety of mischievous sentiments." Of President Adams, he says—"Mr. Adams, has only completed the scene of ignominy, which Mr. Washington had begun." In another part of the work, he calls President Adams, a "**HOBBY TRAITOR.**"

Besides innumerable instances, even more vulgarly abusive, from other pens, affecting both presidents, and congress; as well as its branches, separately.

These instances, may suffice to shew, the propriety of the law in question; not to notice the letter to Mazzei, and other writings of the leaders of the party, and patrons, of Callender, and other libellers. The letter just named, made its appearance in the United States, 1797, or early in 1798. It served President Washington, a like purpose, that the telescope of Herschell, serves modern philosophers, to discover regions hitherto concealed, dark, and unknown. While the one, ena-

bles the curious to explore the distant recesses of the empyrean, for new orbs; the other, conducted, though unwillingly, the perception of Washington, to a full discovery of the duplicity which had been concealed in the bosom of its author, in relation to himself. From that time, he was never heard to say, "that Mr. Jefferson, had given him no cause to doubt his sincerity."

This history, which aims at the delineation of public, not private character, might be thought deficient, in observation, or in justice to Kentucky, were it to omit noticing that she exhibited great sensibility towards the liberty of speech, and of the press: making by parts, and by the whole, many patriotic resolutions on the occasion.

The governor, in communications to the legislature, notices these subjects, in the following terms; alluding to the *sedition law*, he says, "which by fencing round the different branches of government in their official capacity, with penal terrors in a manner before unknown, hath created a new crime against the United States, in a case where an interference on the part of the legislature, was rendered unconstitutional, by that clause which forbids the enacting of any law, *abridging the freedom of speech, or of the press.*" That common people should mistake, misapply, or pervert the constitution, when the governor, sets, or sanctions the example, is not to be made a subject of wonder; nor hardly of remark. Here it is seen that an act of congress which relates expressly to *writing*, thereby excluding mere verbal speech—and which prohibits the publication of *malicious falsehoods* only—admitting the publication of *truth*, however it may operate against the subject of it, stigmatized as being unconstitutional, and void; because the constitution had provided for "the freedom of speech, and of the press." When in truth, and in fact, there is not any repugnance, between the law, and the constitution: unless writing, be speaking; and the press, may publish what slander, the editor pleases—and that these are rights secured by the constitution. But except it is under the influence of a blind, and devoted party spirit, in which misrepresentation, and defama-

tion is adopted as an essential part of the system; it is surely impossible for candid men to admit the construction assumed by the governor. Even if the act affected "speaking," without "writing," which it does not; is there a man on earth who pretends to any truth, and discernment, who would say, that the constitution protects *lying* and *slandering*, by *SPEECH*? Or that it secures indemnity to the owner of a press, under the term, *freedom of the press*, to defame, and libel, whom he chooses to select for the purpose? It seems incredible. And yet such things were frequently seen; and continue to be practised.

The resolutions, reverberate and amplify the ideas of the governor—they were approved by the legislature—and continued to protract the agitation of which the governor had made report, as already noticed: while the newspapers, teemed with the froth and scum of the boiling pot. It is a remarkable fact, that the same party, and kind of people, from whence sprang the present *relief*, and *judge breaking* majority, were in the case of these acts of congress, *great sticklers for the constitution, and for an independent judiciary.*

Notwithstanding the length of these remarks, they are yet to be extended to the governor's observations on the expected war with France. "A war," says he, "horrible in its nature, and ruinous in its consequences, hangs over us: a war by which we cannot possibly gain any advantages—but may lose every thing that is valued by freemen:—and if by our united exertions, and the favour of a kind Providence, we may be so fortunate as to maintain our independence; it will be at all events at an expense under which we and our posterity must groan; and in consequence of which we may be rendered unable to encounter hereafter more formidable evils than any with which we are at present threatened."

Presently he adds, that reports had gone abroad highly unfavourable to the political character of Kentucky: "That the people were represented, as, if not in a state of insurrection, yet utterly disaffected to the federal government, and determined to afford it no support; and that this commonwealth waits only for an opportunity to withdraw herself from the

union." He expresses a decided conviction of "the falsehood of these aspersions;" and recommends a declaration of attachment to the federal constitution, and a determination to support the government in every measure, "authorized by the commission under which it acts."

A cotemporaneous publication, says: "The *aristocrats* call the meetings of the people on the alien and sedition laws, *mobs*, and say, the magistrates ought to disperse them."

A feature of the times may be caught from the toasts, and resolutions of popular assemblages: a few, by way of samples, will be inserted.

At a meeting of the officers of three regiments in Lexington, the following toasts were given:

- "1. The United States of America.
- "2. The western world: perpetual union on principles of equality.
- "3. The navigation of the Mississippi at any price but that of liberty.
- "4. *Harmony with France and Spain, and a reciprocity of good offices.*
- "5. The congress of the United States: may wisdom, firmness, and a sacred regard to the principles of the constitution govern their proceedings.
- "6. Energetic government on democratic principles.
- "7. Trial by jury: the liberty of the press: and no standing army.
- "8. May the atlantic states be just, the western states be free, and all be happy.
- "9. The harmony of departed heroes and patriots.
- "10. No paper money: no tender laws: and no legislative interference in private contracts.
- "11. Thomas Jefferson, and the virtuous minority in congress.
- "12. May all men in office remember that they are the servants, not the masters of the people.
- "13. No alliance offensive and defensive with any foreign power.

"14. Edward Livingston, and Albert Gallatin.

"15. A well-regulated militia, the only proper mode of national defence."

The following resolutions are extracted from the proceedings of the officers of the seventh regiment, militia; in Madison county:—

"1st. *Resolved*, That the extension of commerce has been too much an object with congress, and to this cause is to be attributed the present unhappy war with the French republic: a war which does not offer a single rational hope of compensation to those citizens who have been injured by French depredation, nor of reimbursing the expenses which it may occasion.

"2d. *Resolved*, That the powers, of raising armies, and of borrowing money, as now vested in the president, appear to us to be dangerous and alarming.

"3d. *Resolved*, That the bills, called, the alien and sedition bills, are infringements of the constitution, and of natural right; and that we cannot approve or *submit* to them.

"6th. *Resolved*, That we are averse to intimate connexions with any foreign power, but more especially with Great Britain: an alliance with that country being impolitic, and inconsistent with the principles of the two governments."

From a number of resolutions entered into by a numerous meeting of the citizens in Lexington, the following are selected, as applicable to the subject under consideration.

"2d. *Resolved*, That the present war by the United States, against France, is impolitic, unnecessary, and *unjust*, inasmuch as the means of reconciliation with that nation have not been unremittingly and sincerely pursued: hostilities having been authorized against it by law, while a negotiation was pending.

"3d. *Resolved*, That a war by the United States against France, will only then be necessary and proper, when engaged in for the defence of their territory; and that to take any part in the present political commotion of Europe, will endanger our liberty and independence. That an intimate connexion with the corrupt and sinking monarchy of Britain, ought to be abhorred, and avoided."

These, and many more of a similar complexion, calculated to disaffect the citizens to the federal government, which alone had charge of foreign relations, and the defence of the United States—to render them particularly averse from a war with France, although forced on the United States, as the alternative of base submission to French insult, in refusing to receive the ministers of the United States; and in making open war on their commerce; were passed or approved, throughout the country. Such are the effects of party spirit, when directed to sinister objects, and communicated to the popular mass, forever subject to delusion.

The following decree of the executive directory of France, may serve as a comment, on the passionate regard of American citizens, always including those of Kentucky, for the French republic.

It bears date the 29th of October, 1798; a few days before the governor so pathetically deplored the war, which the United States, as might be inferred from what was said, was wantonly bringing on France, and themselves. It is to be remembered that the United States were yet *neutral*.—The decree follows:

“The executive directory, upon the report of the minister of foreign relations, considering that the fleets, privateers, and ships of England and Russia, are in part equipped by foreigners:

“Considering that this violation, is a manifest abuse of the rights of nations, and that the powers of Europe have not taken any measures to prohibit it: Decrees,

“1. Every individual native of friendly countries *allied* to the French republic, or *neutral*, bearing a commission granted by the enemies of France, or making part of the crews of ships of war, and others, enemies, shall by this single fact be declared A PIRATE, and treated as such, without being permitted in any case, to allege, that he had been forced into such service by violence, threats, or otherwise.”

A more odious act of despotism cannot well be conceived. Besides, it might operate directly upon American citizens impressed into the British service. The punishment to be inflicted was death.

About the same time, accounts were published, of the capture and condemnation of American ships and cargoes, by French cruisers in the West Indies.

But to close this unpleasant portraiture, it may be remarked, that Kentucky, in addition to the influence of the general party spirit, was also somewhat agitated by local causes, connected with the question of convention, or no convention, to revise the constitution.

Much was said about aristocrats, and the aristocracy of the senate—more about equal representation—and not a little concerning the emancipation of slaves. With these topics, and with great fervour, as if the liberty of speech, and the freedom of the press, had been in real danger; were mingled denunciations against the act of congress; which, as has been shewn, went only to punish *written and published falsehood, with intent to defame!* There was a general deprecation of a war with France—and also of an alliance with England—which seemed to be anticipated as a consequence; and many stout resolutions to support the constitution of the United States, (now become, rather suddenly, a great favourite,) against recent violations. While, as if not sufficiently supplied, with native productions for the press, of the inflammatory kind, such were selected from the papers of other states, republished, and read, with high relish and applause, by those new and zealous lovers of the constitution.

In the mean time, congress had assembled again, and the president informed it of the ultimate failure of the measures taken to bring about an adjustment of the subsisting differences between France and the United States. That nothing had been discovered in the conduct of France, which ought to change or relax our measures of defence. That he could not so far humiliate the United States, as to send a third embassy, the two first having been refused a reception; but that he would receive an envoy from France, should one be sent; and otherwise oppose no obstacle to a restoration of friendly relations between the two powers. That to be prepared for war, was the way to ensure peace. But he did not propose to repeal



the alien, or sedition laws. While some Frenchmen, who conscious no doubt, that they merited suspicion, withdrew themselves from the United States.

While Kentucky proposed, that her resolutions should not only be sent to her members of congress, to be presented to that body, but also to the different states, for their concurrence. Thus evincing her sincerity, in the evidence of her folly. It was then the opinion of the governor, that "any violation of the constitution once acquiesced in, subverts the great palladium of our rights, and no barrier remains to oppose the introduction to despotism." A very just sentiment.

It is certainly correct, in theory, and should be demonstrated in practice, by freemen, living under written constitutions of government, that neither peace, nor war, could induce them to connive at serious infractions of their constitution, either particular, or general, when duly ascertained by the proper tribunals. But that a part, a state for example, should take upon itself, as Kentucky did, to decide peremptorily for the whole, or even for herself, in the last resort, as to the acts of congress, was a more flagrant breach of the constitution, which gives to congress the exclusive right of making war—of course of controlling such aliens as may be in the United States—and also, the express *right of punishing offences against the law of nations*, in both peace and war—than the punishment of falsehood, or the removal of an alien, by means of the one, or the other of the laws, which gave so much alarm, to say nothing of the right of self-defence, inherent in every legislative assembly. But perhaps this is repetition.

Such in fact was the political aspect of the country—so general, and so animated was popular disaffection to the administration of Mr. Adams; and to such a pitch of real ill will, and resentment were the minds of the people wrought, against federalists; that it is not surprising, if superficial observers, or itinerant persons, should take those demonstrations of passion, and spleen but too frequent in the country, for symptoms of disaffection to the government, at that time in the hands of federalists. Who, though determined to sustain the

neutrality declared by the executive; and to maintain the relations of peace with all nations, who would maintain peace with them; yet, when the French government, had shut the door against diplomatic intercourse, first by refusing to receive General Pinkney as envoy from the United States, and afterwards the three envoys, Pinkney, Marshall, and Gerry—and still continued its depredations, and hostility, were no less determined to prepare for resistance; even to the extreme of war, with France. And this was the “front and bearing of their offence.”

The leaders of popular opinion in Kentucky, were pre-engaged from the time of Genet, and democratic societies, to say, and to do, whatsoever they should deem expedient, to render the federal administration unpopular; in order that it might be transferred to Mr. Jefferson, and the anti-federalists; not with a view to dismemberment—nor absolutely, to deliver the country over to France—but to aid her, in the conquest of England. Whose government in the language of these *patriots* was not only corrupt, tyrannical, and detestable, but tottering on its rotten foundations and ready to fall, by dissolved fragments into the hands of the English people—or of France.

That the people, thus deluded, should have been disaffected, was a thing of course—it was what those who misled them, had calculated on; and without which, disappointment and chagrin would have accompanied their loss, of labour. But all the people were not deceived—nor were all disaffected: while probably, there were none who approved of the two laws, which have been noticed; as the more ostensible cause of public discontent at the time.

Cotemporaneous with exertions made in Kentucky, with whatever design, which could but mislead public sentiment, in relation to the government of the United States, and the duties due to it, under the circumstances of the times, it is consoling to find an evidence of the just and patriotic feelings, of a portion of her citizens, authenticated in an address from Mason county, to the president of the United States. It follows:

"SIR: We have seen, with the anxiety which is inseparable from the love of our country, the situation in which the United States are placed by the aggressions committed by the French nation, on our commerce, our rights, and our national sovereignty.

"Whilst the prospect of peace was in practicable view, we looked anxiously towards that event, but we expected peace upon equitable and honourable terms; we fondly hoped that the constituted powers would meet our envoys on the just and liberal terms offered by them, agreeable to their instructions; but although proper advances have been made on the part of our executive, these reasonable expectations have been disappointed. How it becomes us, as citizens of an independent nation, to act in this crisis, there is no question; as freemen, and Americans, we do not hesitate; we will rally round the standard of our country, we will support the constituted authorities—an insidious enemy shall in vain attempt to divide us from the government of the United States. To the support of that government, against any foreign enemy, we pledge our lives, our fortunes, and our sacred honour."

The president replied:

"GENTLEMEN: I have received an obliging address, subscribed with a long list of the names, of your respectable inhabitants, declaring without hesitation, their determination to rally round the standard of their country; and pledging their lives, their fortunes, and their sacred honour, to support its constituted authorities. An address so decided, and patriotic, from a state so remote from the seat of government, and the first of the kind from the state of Kentucky, gave me great pleasure. It is a proof of a truth that I have all along believed, without a doubt, that wherever there were Americans, there such sentiments, would sooner or later, appear.

"JOHN ADAMS."

*"Philadelphia, Dec. 3d, 1798."*

It is believed, there were a few other addresses of the same character, from Kentucky, and one certainly from Lexington;

but were these to counteract the effect of general feelings, or of the resolutions adopted by the legislature, on the motion of Mr. Breckenridge? No: they were but as drop-shot, opposed to cannon balls.

It was at this session the law passed, for calling a convention to reform, the state constitution.

The question had been put to the people as soon as the constitution would permit: whether, or not, they wanted a convention to revise the constitution—and answered in the negative; when tested by the constitution. For it was ascertained, by the declaration of members, and other evidence, that taking the votes *actually given* at the election in May, throughout the state, and there were not a majority for a convention, the returns were partial, and consequently did not exhibit the whole truth. In consideration whereof the senate had refused, to pass a second law, for taking the votes on the same question in 1798; notwithstanding which they had been taken without law, in some counties; while in others, they had been omitted: and in some, the sheriffs not thinking themselves bound to make a return of the votes had neglected to do it: that in fact, only about two-thirds of the twenty-four counties in the state, appeared upon the list.

Fleming county had returned four hundred and eighty-three votes, for a convention, but wholly omitted to return the whole number; which was the case also as to Harrison county; that having returned upwards of four hundred votes for a convention; both being populous counties. That even in 1797, the constitution, and the law, notwithstanding; neither Lincoln nor Logan had returned the aggregate number of votes—where it was known the people were generally against the convention; especially the first, which though populous had only returned fifty-three in favour of a convention.

That upon the whole state of the case as presented to the general assembly, the constitution did not authorize the passage of a law, for a convention on the ground of the *people's vote*.

To this, it was replied, that, admitting it all, though there was reason to believe a majority of the voters were in favour

of a convention, the right of calling one was with *two-thirds* of the legislature—accordingly two-thirds passed the act, for that purpose.

At this session, besides the usual number and species of private acts, two for divorces, others of a general nature, some of which will be more particularly noticed—in all, seventy-three were passed.

An act of the legislature of Kentucky, passed at this session, is thought highly explanatory of the state of public feeling towards the government of the United States—it is entitled “An act to disable all persons holding any office or appointment under the general government, from holding any office or appointment under the authority of this state.” This act already noticed, will not be detailed. It was an exemplification of the title—and made it the express duty of grand juries, to present all persons known to have violated its inhibitions.

How far the dispositions which dictated, and sustained it, could have been relied on, to aid the United States in a war against France, was happily not put to the test. France having given intimations in 1799, that she would receive a minister, and enter into treaty, one was sent, and a treaty made; as will be again noticed.

A new county was erected out of the counties of Lincoln and Green, named, PULASKI, and to have effect from and after the 1st of June, 1799: “beginning at the mouth of Rockcastle, thence up the same four miles, when reduced to a straight line, above the reserved line; thence to the dividing ridge between Skegg’s creek and Buck creek, where the road crosses from Stephen Lankford’s, to Buck creek; thence to the Green River knobs; thence south forty-five degrees west to the present line between Green and Lincoln; thence to the proposed new county east line taken from Green; thence with said line south to the state line; thence along said line so far that a north line will strike the beginning.”

New county, now succeeded, new county, in rapid succession: indicating both extension, and increase of population; as formerly.

PENDLETON will be placed the next; in the order of time. That was to have effect from the 10th of May, 1799. "Beginning on the Ohio river, two miles below the mouth of Big Stepstone creek; thence a direct line across Main Licking as far below the main forks, as it is from that place, to the mouth of the north fork, of Licking, above the said forks, to continue said line south seventy-six degrees west, until it shall strike the Scott and Franklin lines; thence with the same to the Harrison county line; thence with the same to Main Licking, to the mouth of the north fork; thence a direct line to the mouth of Big Stepstone, and down the Ohio to the beginning."

LIVINGSTON, was the name of a county; "beginning on the Mississippi where the Tennessee state line strikes the same, and up the Mississippi to the mouth of the Ohio, and up the same to the mouth of Trade water, and up the same to Montgomery's fork; thence up said fork, and the branch that intersects the ridge dividing the waters of Little river and Eddy creek, and with the said ridge to Cumberland river, thence a south course to the Tennessee state line, thence with the same to the beginning:" to have effect from the third Tuesday in May, 1799.

HENRY was also a county of this session: it was to have effect from the first day of June, 1799. "Beginning ten miles due north from the public square, on which the court house of the county of Shelby is now situated; thence west to the Jefferson line, thence with said line to the Ohio river; thence up the Ohio with the meanders thereof six miles above the mouth of Corn creek, on a straight line from the mouth thereof; thence a straight line till it strikes the road leading from Shelbyville to the mouth of Kentucky, two miles north of Henry Dougherty's; thence a direct line to the Kentucky river, two and a half miles above the mouth of Eagle creek; thence up the Kentucky river, and the Franklin line so far till a west course will strike the beginning."

CUMBERLAND county, is also a creation of this general assembly. It was to have effect from the 1st day of July, 1799. "Beginning on the Warren line, a west course from the Marfow-bone spring; thence east, until it strikes the dividing ridge

between the waters of Cumberland and Green rivers, and with the same to the wagon road leading from Colonel William Casey's to Burksville, at the head of Renneck's creek; thence eastwardly, so as to leave the settlement of William Butler, jr. in Green county; thence to continue such a course as will just leave the settlement of Greasy creek in Green also; then east to the Lincoln line; then south, to the state line, and with it, to the Warren line; thence with the Warren line to the beginning."

GALLATIN, furnished a name for a sixth new county at this period. That was to have operation from the second Monday in May, 1799. "Beginning six miles above the mouth of Corn creek, on a straight line, and to run up the Ohio to the Campbell county line; thence along said line sixteen miles; thence to strike the Kentucky at the Rock spring near the Clay lick; thence down the Kentucky, within two and a half miles of the mouth of Eagle creek; thence a direct line, till it strikes the road from Shelbyville to the mouth of Kentucky, two miles north of Henry Dougherty's; thence a direct line to the beginning."

MUHLENBERG, was then also made the name of a new county, established to take effect from the 15th day of May, 1799. "Beginning at the mouth of Muddy river, running up said river with its meanders, within three miles of the mouth of Wolflick fork, on a straight line; from thence with a straight line to the Christian county line, six miles below Benjamin Hardin's; from thence on a straight line, so as to strike Pond river, two miles below Joel Downing's; from thence down Pond river with the meanders, to the mouth; from thence up Green river to the beginning."

It was now enacted, that the repeal of a law, which had repealed a former, should not be construed to revive the law formerly repealed, without express words to that effect.

And further, that every act passed at any stated annual session, should have force at the expiration of three months from its passage, and not sooner, unless the time be named therein.

The county of OHIO, was created, to take effect from the 1st day of July, 1799. "Beginning on the Ohio river at the mouth

of Blackford's creek; thence up the same to the head of the southeast fork that heads opposite the head of Harress's fork of Rock Lick creek; thence down the same to Rough creek; thence down the same to the Flat Clay lick on Bear creek; and down the same to Green river; and down Green river to the Ohio, and up the same to the beginning."

Fayette county was divided, and JESSAMINE made; to take effect from the 1st day of February, 1799. "Beginning on the Woodford line where it strikes the Kentucky river, near Todd's ferry, thence along said line half a mile north of John Allen's military survey; thence to the seven mile tree on Curd's road; thence to the eight mile tree on Tate's creek road; thence along said last mentioned road to the Kentucky river; then down the river to the beginning."

The Winchester academy was established at this session.

BARREN county was erected, to have effect from the 10th day of May, 1799. "Beginning at the junction of Skegg's Beaver creek and Big Barren river, to run north to Green river; thence up the same to the mouth of Little Barren river; thence up the same to the Elk lick; thence with the Green county line four miles; thence a straight line to the Pilot knob; thence a straight line to the mouth of the east fork of Little Barren river; thence up the same till on a reduced line there shall be six miles taken from Green, by running a parallel or south line so far that a due west line from the Marrow-Bone spring, will intersect the Green line; thence with the Green line to the Tennessee state line; thence with the same a due west course so far that a due north course will strike the beginning."

The county of HENDERSON, was enacted into existence at this session, so prolific in the production of counties. This was to take effect from the 15th of May, 1799. "Beginning on Trade water opposite the mouth of Montgomery's fork; thence to the head of Drake's creek; thence down Drake's creek to Pond river, and down the same to Green river, and down the same to the Ohio, and down the same to the mouth of Trade water, and up the same to the beginning."



Thus were eleven new counties made; the greater number of which, were in that section of the state called the Green River country, whose population had been rapidly increased, by means of the head right laws; which settled, the south of Green river.

In compliance with the joint request of a majority of the trustees of the Transylvania seminary—and of the Kentucky academy—the two institutions, were united on the terms agreed, by the parties.

Twenty trustees were named—and the establishment was henceforth to take the name of, the Transylvania University; and to be administered in Lexington, at the seat of the seminary, until removed by a board of the trustees; two-thirds of whom were required to concur in the measure.

The trustees were incorporated, with power over the funds; and the right, by the concurrence of a majority of the whole number, to elect poor boys, or youths, of promising genius, into the institution, to be assisted in their education by the public, or common funds.

Former laws of the two united institutions, to be the laws of the university, until altered by the legislature—except as to certain modifications, which were made in the act.

The Bourbon academy, was established by an act of this session.

And by another act, more than twenty other similar seats of education, were also established, and corporate powers, vested in trustees; with a faculty of superintendence, and also to hold and control such funds as should be bestowed upon their several institutions, for the purposes of education. Indeed, the legislature have been at no time backward in granting such charters. While the idea seems well established, that one in each county is a matter of course; and as many more as may be petitioned for.

This act, like that passed at the preceding session on the subject of academies, granted six thousand acres of land to each academy by it established; to be located under the

direction of the trustees. And the like quantity of six thousand acres, for an academy in each county where none had been established; to be located under the direction of the county courts.

An act allowing the settlers south of Green river to pay the money due the state, in equal annual portions, also became a law at this session. Four instalments, with interest, were allowed.

It seems that every history should exhibit statements, from time to time, of the public revenues; and if this is deficient in precision occasionally, it is to be ascribed to the loss of official journals, for some of the years, or defects in reports. In this part of the work, the most important consideration is to shew the progressive increase of both the receipt and expenditure of public money: and this may be done with sufficient accuracy, by taking a medium between those years in which the aggregates have been given with certainty. And that must suffice for this year.

## CHAP. VII.

*Assemblage at Bryant's, &c.—President announces a new mission to France—Other measures which lead to accommodation, &c.—Convention assembled in Frankfort, and Constitution formed—The new Constitution—Legislative proceedings—Proposals to improve the navigation of Kentucky river—Vineyard Society incorporated—Several new counties made, and other acts done.*

[1799.] Early in February, 1799, a numerous assemblage of the people of Fayette took place at Bryant's station, in order to interchange opinions, and come to resolutions about the qualifications and sentiments of persons to be elected as members to the convention for revising the constitution. Equality of representation; a divided legislature; the independence of courts, and judges; the compact with Virginia; and the continuation of slavery, exempt from legislative emancipation, were severally resolved, affirmatively. The latter subject produced a considerable opposition, and some warmth. The resolution was qualified with various ameliorative provisos; such as are seen in the constitution. Committees of two members from each religious society, and from each militia company, were recommended, to meet at the same place on the third Saturday of the same month for the purpose of agreeing on a list of names, of persons to be elected as representatives, to the convention. It is not believed that this recommendation was generally attended to. There was another meeting, at Colonel Patterson's, which entered into a resolution in favour of gradual emancipation; and who also formed a ticket, and recommended a fuller meeting at the seminary, on the April court day: but, with little effect.—Neither were the Bryant's Station measures generally imitated.

On the 18th of February, the president of the United States announced to the senate, that he nominated William Vans Murray, our minister resident at the Hague, to be minister plenipotentiary to the French republic. With this nomination,

he transmitted a document which intimated that the government of France would receive a minister from the United States—but as this intimation was not official, he deemed it proper to inform the senate, “that he should instruct Mr. Murray not to go to France, before he received direct and unequivocal assurances from the French government, through its minister of exterior relations, that he would be received in character, have its privileges extended to him, and be met by another minister of equal rank, title, and power, to treat of, discuss, and conclude, all controversies between the two republics.”

Mr. Murray having been appointed, received the requisite assurances—Judge Ellsworth and Gen. Davie, upon further assurances, being united with him, a treaty was made, in the course of the year 1800, which terminated existing hostilities: wherefore, the navy was reduced, and the army disbanded.

In the mean time, there had been several sea fights between the national ships of the two parties. The 9th of February, the *Constellation*, Captain Thomas Truxton, attacked and captured the *L'Insergente*, French frigate, of forty guns, and four hundred men—seventy of whom were killed and wounded; with the loss of one killed, and two badly wounded, on the side of the victors. The *L'Insergente* had previously taken the *Retaliation*, a ship of the United States.

The 20th of the month, Captain Barry of the frigate *United States*, engaged, and sunk a French privateer. These were but retaliations, which were succeeded by others; not within the scope of this history.

The attention of the people being much engaged with the approaching election, and their tempers somewhat mitigated, by the prospect of peace with France, were the less moved, by the enemies of the general government, who would still have irritated them.

The elections were made, of characters very similar to those who formed the first constitution; with the exchange of John Breckenridge, for George Nicholas.

Seventeen counties were represented—the new counties voting with the old ones, from which they had been taken; so as to make the requisite number of members.

On Monday, the 22d of July, the convention met in the state house at Frankfort; chose Alexander S. Bullitt, for their president; Thomas Todd for clerk—and adopted the rules of the late house of representatives, for its government: the next day, it took the constitution into its custody, and placed it under its examination—for better, or for worse. The proceedings were with open doors; and in all respects so similar to those of the legislature, that was it consistent with this history, to notice the different propositions, or debates, but little that is either useful, or amusing, could be extracted from them. The result—the constitution itself, will be inserted.

Saturday, the 17th of August, the convention having made a new constitution, and provided for its taking place on the 1st day of June, 1800—prescribed an eight years' existence to the first, and then adjourned without day.

The following is the fruit of its labour:

*"The Constitution, or form of government for the State of Kentucky.*

"We, the representatives of the people of the state of Kentucky, in convention assembled, to secure to all the citizens thereof, the enjoyment of the right of life, liberty, and property, and of pursuing happiness, do ordain and establish this constitution for its government.

*"ARTICLE I.—Concerning the distribution of the powers of the government.*

"SEC. 1. The powers of the government of the state of Kentucky, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another.

"2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

**"ARTICLE II.—Concerning the legislative department.**

"SEC. 1. The legislative power of this commonwealth shall be vested in two distinct branches; the one to be styled the house of representatives, the other the senate, and both together, the general assembly of the commonwealth of Kentucky.

"2. The members of the house of representatives shall continue in service for the term of one year from the day of the commencement of the general election, and no longer.

"3. Representatives shall be chosen on the first Monday in the month of August in every year; but the presiding officers of the several elections shall continue the same for three days, at the request of any one of the candidates.

"4. No person shall be a representative, who at the time of his election is not a citizen of the United States, and hath not attained the age of twenty-four years, and resided in this state two years next preceding his election, and the last year thereof in the county or town for which he may be chosen.

"5. Elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election precincts into which the legislature may think proper, from time to time, to divide any or all of those counties: Provided, that when it shall appear to the legislature that any town hath a number of qualified voters equal to the ratio then fixed, such town shall be invested with the privilege of a separate representation, which shall be retained so long as such town shall contain a number of qualified voters equal to the ratio which may from time to time be fixed by law; and thereafter elections for the county in which such town is situated, shall not be held therein.

"6. Representation shall be equal and uniform in this commonwealth; and shall be forever regulated and ascertained by the number of qualified electors therein. In the year eighteen hundred and three, and every fourth year thereafter, an enumeration of all the free male inhabitants of the state, above twenty-one years of age, shall be made in such manner

as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed, as not to be less than fifty-eight, nor more than one hundred, and they shall be apportioned for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors; but, when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties may not have a residuum or residuums, which, when added to the small county would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together for the purpose of sending a representative: Provided, that when there are two or more counties adjoining which have residuums over and above the ratio then fixed by law; if said residuums when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

"7. The house of representatives shall choose its speaker and other officers.

"8. In all elections for representatives, every free male citizen (negroes, mulattoes and Indians excepted) who at the time being, hath attained to the age of twenty-one years, and resided in the state two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county or town in which he may actually reside at the time of the election, except as is herein otherwise provided. Electors shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to, and returning from elections.

"9. The members of the senate shall be chosen for the term of four years; and when assembled shall have the power to choose its officers annually.

"10. At the first session of the general assembly after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into four classes. The seats of the sena-

tors of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; and of the fourth class, at the expiration of the fourth year; so that one-fourth shall be chosen every year, and a rotation thereby kept up perpetually.

"11. The senate shall consist of twenty-four members at least, and for every three members above fifty-eight which shall be added to the house of representatives, one member shall be added to the senate.

"12. The same number of senatorial districts shall, from time to time, be established by the legislature, as there may then be senators allotted to the state; which shall be so formed, as to contain, as near as may be, an equal number of free male inhabitants in each above the age of twenty-one years, and so that no county shall be divided, or form more than one district; and where two or more counties compose a district, they shall be adjoining.

"13. When an additional senator may be added to the senate, he shall be annexed by lot to one of the four classes, so as to keep them as nearly equal in numbers as possible.

"14. One senator for each district shall be elected by those qualified to vote for representatives therein, who shall give their votes at the several places in the counties or towns where elections are by law directed to be held.

"15. No person shall be a senator, who, at the time of his election is not a citizen of the United States, and who hath not attained to the age of thirty-five years, and resided in this state six years next preceding his election, and the last year thereof in the district for which he may be chosen.

"16. The first election for senators shall be general throughout the state, and at the same time that the general election for representatives is held; and thereafter, there shall, in like manner, be an annual election for senators to fill the places of those whose time of service may have expired.

"17. The general assembly shall convene on the first Monday in the month of November in every year, unless a differ-



ent day be appointed by law, and their sessions shall be held at the seat of government.

"18. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members, in such manner, and under such penalties as may be prescribed thereby.

"19. Each house of the general assembly shall judge of the qualifications, elections and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

"20. Each house of the general assembly may determine the rules of its proceedings; punish a member for disorderly behaviour; and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

"21. Each house of the general assembly shall keep and publish weekly a journal of its proceedings; and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on their journal.

"22. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

"23. The members of the general assembly shall severally receive from the public treasury, a compensation for their services, which shall be one dollar and a half a day, during their attendance on, going to, and returning from the sessions of their respective houses: Provided, that the same may be increased or diminished by law; but no alteration shall take effect during the session, at which such alteration shall be made.

"24. The members of the general assembly shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to, and returning from the same; and for any speech or debate, in either house, they shall not be questioned in any other place.

"25. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the time such senator or representative was in office, except to such offices or appointments as may be made or filled by the elections of the people.

"26. No person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect; nor whilst he holds or exercises any office of profit under this commonwealth, shall be eligible to the general assembly; except attorneys at law, justices of the peace, and militia officers: Provided, that justices of the courts of quarter sessions shall be ineligible, so long as any compensation may be allowed them for their services: Provided, also, that attorneys for the commonwealth, who receive a fixed annual salary from the public treasury, shall be ineligible.

"27. No person, who at any time, may have been a collector of taxes for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly until he shall have obtained a quietus for the amount of such collection, and for all public monies for which he may be responsible.

"28. No bill shall have the force of a law, until on three several days, it be read over in each house of the general assembly, and free discussion allowed thereon; unless in cases of urgency four-fifths of the house where the bill shall be depending may deem it expedient to dispense with this rule.

"29. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose amendments, as in other bills: Provided, that they shall not introduce any new matter, under the colour of an amendment, which does not relate to raising a revenue.

"30. The general assembly shall regulate by law, by whom, and in what manner, writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

**"ARTICLE III.—Concerning the executive department.**

**"Sec. 1.** The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be styled the governor of the commonwealth of Kentucky.

**"2.** The governor shall be elected for the term of four years by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct.

**"3.** The governor shall be ineligible for the succeeding seven years, after the expiration of the time for which he shall have been elected.

**"4.** He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election.

**"5.** He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths or affirmations prescribed by this constitution.

**"6.** No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor.

**"7.** The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected.

**"8.** He shall be commander in chief of the army and navy of this commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do, by a resolution of the general assembly.

"9. He shall nominate, and, by and with the advice and consent of the senate, appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for; **Provided**, that no person shall be so appointed to an office within any county, who shall not have been a citizen and inhabitant therein, one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken: **Provided also**, that the county courts shall be authorized by law to appoint inspectors, collectors and their deputies, surveyors of the highways, constables, jailors, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

"10. The governor shall have power to fill up vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

"11. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly; in which the power of pardoning shall be vested.

"12. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

"13. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall deem expedient.

"14. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

"15. He shall take care that the laws be faithfully executed.

"16. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

"17. He shall, by virtue of his office, be speaker of the senate, have a right, when in committee of the whole, to debate and vote on all subjects; and when the senate are equally divided, to give the casting vote.

"18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor, absent or impeached, shall return or be acquitted.

"19. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker, for that occasion. And if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government.

"20. The lieutenant governor, while he acts as speaker to the senate, shall receive for his services the same compensation, which shall for the same period be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office.

"21. The speaker pro tempore of the senate, during the time he administers the government, shall receive in like manner the same compensation which the governor would have received, had he been employed in the duties of his office.

"22. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary, for the time being, to convene the senate for the purpose of choosing a speaker.

"23. An attorney-general, and such other attorneys for the commonwealth as may be necessary, shall be appointed, whose duty shall be regulated by law. Attorneys for the commonwealth for the several counties, shall be appointed by the respective courts having jurisdiction therein.

"24. A secretary shall be appointed and commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers, relative thereto, before either house of the general assembly, and shall perform such other duties as may be enjoined him by law.

"25. Every bill which shall have passed both houses, shall be presented to the governor; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it; if, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for, and against the bill, shall be entered on the journal of each house respectively; if any bill shall not be returned by the governor, within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

"26. Every order, resolution or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or, being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

"27. Contested elections for a governor and lieutenant governor, shall be determined by a committee to be selected from both houses of the general assembly, and formed and regulated in such manner as shall be directed by law.

"28. The freemen of this commonwealth (negroes, mulattoes and Indians excepted) shall be armed and disciplined for its defence. Those who conscientiously scruple to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

"29. The commanding officers of the respective regiments shall appoint the regimental staff; brigadier generals their brigade majors; major generals, their aids; and captains, the non-commissioned officers of companies.

"30. A majority of the field officers and captains in each regiment, shall nominate the commissioned officers in each company, who shall be commissioned by the governor: Provided that no nomination shall be made, unless two at least of the field officers are present; and when two or more persons have an equal and the highest number of votes, the field officer present, who may be highest in commission, shall decide the nomination.

"31. Sheriffs shall hereafter be appointed in the following manner:—When the time of a sheriff for any county may be about to expire, the county court for the same (a majority of all its justices being present) shall in the months of September, October or November next preceding thereto, recommend to the governor two proper persons to fill the office, who are then justices of the county court: and who shall in such recommendation pay a just regard to seniority in office and a regular rotation. One of the persons so recommended shall be commissioned by the governor, and shall hold his office for two

years if he so long behave well, and until a successor be duly qualified. If the county courts shall omit in the months aforesaid to make such recommendation, the governor shall then nominate and by and with the advice and consent of the senate, appoint a fit person to fill such office.

*"ARTICLE IV.—Concerning the judicial department.*

"SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as the general assembly may from time to time erect and establish.

"2. The court of appeals, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only; which shall be coextensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law.

"3. The judges both of the supreme and inferior courts shall hold their offices during good behaviour; but for any reasonable cause which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall at stated times receive for their services an adequate compensation, to be fixed by law.

"4. The judges shall, by virtue of their office, be conservators of the peace throughout the state. The style of all process shall be "The commonwealth of Kentucky." All prosecutions shall be carried on in the name, and by the authority of the commonwealth of Kentucky, and conclude against the peace and dignity of the same.

"5. There shall be established in each county now, or which may hereafter be erected, within this commonwealth, a county court.

"6. A competent number of justices of the peace shall be appointed in each county; they shall be commissioned during



good behaviour, but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of two-thirds of each house of the general assembly: Provided, however, that the cause or causes for which such removal may be required, shall be stated at length in such address and on the journal of each house.

"7. The number of the justices of the peace, to which the several counties in this commonwealth now established, or which may hereafter be established, ought to be entitled, shall from time to time be regulated by law.

"8. When a surveyor, a coroner, or a justice of the peace, shall be needed in any county, the county court for the same, a majority of all its justices concurring therein, shall recommend to the governor two proper persons to fill the office, one of whom he shall appoint thereto: Provided, however, that if the county court shall for twelve months omit to make such recommendation, after being requested by the governor to recommend proper persons, he shall then nominate, and by and with the advice and consent of the senate, appoint a fit person to fill such office.

"9. When a new county shall be erected, a competent number of justices of the peace, a sheriff and coroner therefor, shall be recommended to the governor by a majority of all the members of the house of representatives from the senatorial district or districts in which the county is situated—and if either of the persons thus recommended shall be rejected by the governor or the senate, another person shall immediately be recommended as aforesaid.

"10. Each court shall appoint its own clerk, who shall hold his office during good behaviour; but no person shall be appointed clerk, only pro tempore, who shall not produce to the court appointing him, a certificate from a majority of the judges of the court of appeals, that he had been examined by their clerk in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk to any court of the same dignity with that for which

he offers himself. They shall be removable for breach of good behaviour by the court of appeals only, who shall be judges of the fact as well as of the law. Two-thirds of the members present must concur in the sentence.

"11. All commissions shall be in the name, and by the authority of the state of Kentucky, and sealed with the state seal, and signed by the governor.

"12. The state treasurer, and printer or printers for the commonwealth, shall be appointed annually by the joint vote of both houses of the general assembly: Provided, that during the recess of the same, the governor shall have power to fill vacancies which may happen in either of the said offices.

*"ARTICLE V.—Concerning impeachments.*

"Sec. 1. The house of representatives shall have the sole power of impeaching.

"2. All impeachments shall be tried by the senate: when sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

"3. The governor and all the civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honour, trust, or profit under this commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.

*"ARTICLE VI.—General provisions.*

"Sec. 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of—  
———according to law."

"2. Treason against the commonwealth, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

"3. Every person shall be disqualified from serving as a governor, lieutenant governor, senator or representative, for the term for which he shall have been elected, who shall be convicted of having given, or offered any bribe or treat, to procure his election.

"4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

"5. No money shall be drawn from the treasury, but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than one year; and a regular statement and account of the receipts and expenditures of all public money, shall be published annually.

"6. The general assembly shall direct by law in what manner, and in what courts, suits may be brought against the commonwealth.

"7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.

"8. All laws which on the first day of June one thousand seven hundred and ninety-two were in force in the state of Virginia, and which are of a general nature; and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this com-

monwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

"9. The compact with the state of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

"10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

"11. All civil officers for the commonwealth at large shall reside within the state, and all district, county or town officers, within their respective districts, counties or towns, (trustees of towns excepted,) and shall keep their respective offices at such places therein as may be required by law: and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

"12. The attorney general, and other attorneys for this commonwealth who receive a fixed annual salary from the public treasury, judges and clerks of courts, justices of the peace, surveyors of lands, and all commissioned militia officers, shall hold their respective offices during good behaviour and the continuance of their respective courts, under the exceptions contained in this constitution.

"13. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

"14. It shall be the duty of the general assembly to regulate by law, in what cases, and what deduction from the salaries of public officers shall be made for neglect of duty in their official capacity.

"15. Returns for all elections for governor, lieutenant governor, and members of the general assembly, shall be made to the secretary for the time being.

"16. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, viva voce.

"17. No member of congress nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same.

"18. The general assembly shall direct by law how persons who are or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

*"ARTICLE VII.—Concerning slaves.*

"Sec. 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to any county in this commonwealth. They shall have full power to prevent slaves being brought into this state as merchandise. They shall have full power to prevent any slaves being brought into this state from a foreign country, and to prevent those from being brought into this state, who have been since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary, to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provision, to abstain from all injuries to them extending to life or limb, and in case of their

neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

"2. In the prosecution of slaves for felony, no inquest by a grand jury, shall be necessary, but the proceedings in such prosecutions shall be regulated by law; except that the general assembly shall have no power to deprive them of the privilege of an impartial trial by petit jury.

"ARTICLE VIII.—The seat of government shall continue in the town of Frankfort, until it shall be removed by law: Provided however, that two-thirds of all the members elected to each house of the general assembly, shall concur in the passage of such law.

"ARTICLE IX.—*Mode of revising the constitution.*

"When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly, shall within the first twenty days of their stated annual session, concur in passing a law for taking the sense of the good people of this commonwealth as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and other returning officers at the next general election which shall be held for representatives, after the passage of such law to open a poll for, and make a return to the secretary for the time being, of the names of all those entitled to vote for representatives who have voted for calling a convention: and if thereupon it shall appear that a majority of all the citizens of this state entitled to vote for representatives, have voted for a convention, the general assembly shall direct that a similar poll shall be opened, and taken for the next year; and if thereupon it shall appear, that a majority of all the citizens of this state entitled to vote for representatives, have voted for a convention, the general assembly shall at their next session call a convention, to consist of as many members as there shall be in the house of representatives, and no more: to be chosen in the same manner and proportion, at the same places, and at the same time, that representatives are, by citizens entitled to vote

for representatives; and to meet within three months after the said election, for the purpose of readopting, amending, or changing this constitution. But if it should appear by the votes of either year as aforesaid, that a majority of all the citizens entitled to vote for representatives, did not vote for a convention, a convention shall not be called.

**"ARTICLE X.—**That the general, great and essential principles of liberty and free government may be recognised and established, **WE DECLARE,**

**"Sec. 1.** That all freemen, when they form a social compact, are equal; that no man or set of men, are entitled to exclusive, separate, public emoluments or privileges, from the community, but in consideration of public services.

**"2.** That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness: For the advancement of these ends, they have at all times an unalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

**"3.** That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law, to any religious societies or modes of worship.

**"4.** That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

**"5.** That all elections shall be free and equal.

**"6.** That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.

**"7.** That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts

and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.

"8. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

"9. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizures and searches; and that no warrant to search any place or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

"10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favour; and, in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

"11. That no person shall for any indictable offence be proceeded against criminally by information, except in cases arising in the land and naval forces, or in the militia when in actual service, in time of war or public danger, by leave of the court, for oppression or misdemeanor in office.

"12. No person shall for the same offence be twice put in jeopardy of his life or limb, nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him.

"13. That all courts shall be open, and every person, for



any injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered without sale, denial or delay.

"14. That no power of suspending laws shall be exercised, unless by the legislature or its authority.

"15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

"16. That all prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident, or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

"17. That the person of a debtor, where there is strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

"18. That no ex post facto law, nor any law impairing contracts, shall be made.

"19. That no person shall be attainted of treason or felony by the legislature.

"20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

"21. That the estate of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

"22. That the citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of the government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

"23. That the rights of the citizens to bear arms in defence of themselves and the state, shall not be questioned.

"24. That no standing army shall, in time of peace, be kept up without the consent of the legislature, and the military shall in all cases, and at all times, be in strict subordination to the civil power.

"25. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

"26. That the legislature shall not grant any title of nobility or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behaviour.

"27. That emigration from the state shall not be prohibited.

"28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.

"SCHEDULE.—That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

"Sec. 1. That all laws of this commonwealth in force at the time of making the said alterations and amendments, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

"2. That all officers now filling any office or appointment, shall continue in the exercise of the duties of their respective offices or appointments for the terms therein expressed, unless by this constitution it is otherwise directed.

"3. The oaths of office herein directed to be taken, may be administered by any justice of the peace, until the legislature shall otherwise direct.

"4. The general assembly, to be held in November next, shall apportion the representatives and senators, and lay off the state into senatorial districts conformable to the regulations prescribed by this constitution. In fixing those apportionments, and in establishing those districts, they shall take for their guide the enumeration directed by law to be made in the present year, by the commissioners of the tax, and the appor-

tionments thus made, shall remain unaltered until the end of the stated annual sessions of the general assembly in the year eighteen hundred and three.

"5. In order that no inconvenience may arise from the change made by this constitution, in the time of holding the general election, it is hereby ordained, that the first election for governor, lieutenant governor, and members of the general assembly, shall commence on the first Monday in May, in the year eighteen hundred. The persons then elected shall continue in office during the several terms of service prescribed by this constitution, and until the next general election, which shall be held after their said terms shall have respectively expired. The returns for the said first election of governor and lieutenant governor shall be made to the secretary, within fifteen days from the day of election, who shall, as soon as may be, examine and count the same, in the presence of at least two judges of the court of appeals, or district courts, and shall declare who are the persons thereby duly elected, and give them official notice of their election: and if any persons shall be equal and highest on the poll, the said judges and secretary shall determine the election by lot.

"6. This constitution, except so much thereof as is therein otherwise directed, shall not be in force, until the first day of June, in the year eighteen hundred; on which day the whole thereof shall take full and complete effect."

Monday, November the 4th, a quorum of the legislature assembled; and on the next day, the governor made his communications. The topics are all local, except that he notices the resolutions passed at the last session, which having been sent to the different states, had in a variety of instances, been acted upon, and the results transmitted—these he promised should be laid before the two houses. He also represented, as he had at the former session, that the revenue was materially deficient.

John Breckenridge, now the favourite, was chosen speaker of the house of representatives.

At this session, the seat of John Smith, a member of the house of representatives, was declared to be vacant, because, having been sheriff of Franklin county, he had not obtained his *quietus* from the auditor of public accounts. Similar facts were reported as to two other members, who probably shared the same fate. But Mr. Smith again offered himself to the people, and was elected by them.

The resolutions of the different states responding to those of Kentucky, on the subject of the alien and sedition laws, above alluded to, having been sent to the house, were taken up: and never, probably, was an experiment, less satisfactory, than that which had been made on the sense of the nation, relative to the character, quality, and faculties, of the general government, as to these laws. Virginia was the only state who approved of the doctrines advanced by Kentucky, as detailed on a former page of this history—of course, the only one who was reciprocated in turn by her. A majority of all the states had disapproved; and some in terms less courteous than appeared to be agreeable to the great men of the time: who however, in an impaired energy of resistance, and in an altered tone of sentiment, betraying somewhat of that awkwardness which proceeds from a conviction of error, without the grace of retraction, terminated an effort at justification, by a protest against the two obnoxious laws. And thus ended the chapter, in the legislature.

In a survey of the Kentucky river, by Martin Hawkins, from Frankfort to the mouth, exhibiting each rapid, in its extent, and descent, the total of all united, is, forty-nine feet and four inches fall, on the whole extent of *four thousand five hundred and fifty yards*; broken into seventeen or eighteen different falls, of unequal lengths. This representation, was accompanied by an estimate of the expense necessary to make each navigable; amounting in the aggregate to "nine hundred and twenty dollars." Suggesting at the same time, that ten thousand dollars would remove all obstructions to the navigation of the river, throughout its whole extent; and that there were persons ready

to undertake the work, at the rate of one thousand dollars a year, and receive their pay in land at fifty dollars per hundred acres.

The proposals, or suggestions, thus publicly made, were not encouraged—the navigation remains unimproved—the lands then in market, under the head right laws, have been sold, at forty dollars, twenty dollars, and even less, per hundred acres: the money converted into bank stock—and that so managed, by creating rival banks, and by other means, no less injudicious; until the stock is reduced twenty per cent below Commonwealth's Bank paper, which in the exchange market for money of the United States, at the most, is worth fifty cents in the dollar. And what is also a fact, which deserves to be recorded on this page, is, that a large portion of the country, adhering to the principles of the policy, which have conducted the legislation of Kentucky, in these matters, are eager to remove the court of appeals, from office, for having declared, a law unconstitutional, *which requires a contract creditor, to take the commonwealth's bank paper, for a bona fide debt, on a replevy of three months—or wait two years for his debt—and then get it as he can.* Shall, or shall not, the judges be broke for this cause, is now the great question, which divides, and agitates, the people, and upon which the election of representatives is to turn in August of the present year, 1824.

Thus, it appears, we are the same kind of people now, as in 1799, alive to our rights, but blind, to our interest, and even to the demands of common justice. Tenacious, to a degree of jealousy, which subjects us to imposition, and to the nurture of imposters, about our *sovereignty*; both, as a state, and as a people; and which we have deposited in written constitutions, for our government, and protection; and as it was thought not to be resumed and abused, by any demagogue, and his followers, who choose to deny the restraints of the constitution, of the state; or of the general government. We are however, under the government of a good democratic majority, whose will makes the constitution, as it does the laws—just as they want it. Should this be thought

to have the appearance of levity: Then it is most gravely apprehended, that a constitution never was, nor ever will be, preserved by a democracy, which counts its majority from the nether end of society; whence is necessarily embraced, the greatest mass of ignorance, and the least attachment to good order, or constitutional restraint.

Early in the session, the legislature passed an act, incorporating a vineyard society, in order to promote the cultivation of the vine. A vineyard, was commenced under a few Swiss emigrants, on the north side of the Kentucky river, above the mouth of Hickman's creek. It was thought for a few years that it would succeed; but subsequently it has declined, and is now extinct, or but little productive. Whether it is a subject not adapted to corporation management, and has failed for want of care, and proper cultivation, or has yielded to the severity of winter spells of weather, which so often kill the fruit, and sometimes affect the trees, has not been precisely determined, nor will the subject, be here discussed.

Hardin county, was divided—whence came BRECKENRIDGE, to take effect from the 1st day of January, 1800—"Beginning at the mouth of Blackford's creek, running with Ohio county line to Rough creek, then up said creek opposite the mouth of Big Clifty; from thence such a course as will strike the Big spring on the road leading from Elizabethtown to Hardin's settlement, thence such a course as will strike the head of Wolf creek, thence down the said creek to the Ohio river, and down the said river to the beginning."

Green River settlers, who had not paid their instalments for lands, were allowed the further time of ten months.

County courts were authorized to license one or more of their body, to celebrate the rites of matrimony: to be governed by the rules prescribed to the ministers of the gospel—and subject to like penalties.

The county of FLOYD, was made to have effect from the 1st of June, 1800. "Beginning at the mouth of Beaver creek near the narrows of Licking; thence north thirty degrees east to the Mason line; thence with said line to a point opposite the

head of Little Sandy; thence a straight direction to the forks of Great Sandy; thence along the division line between this state and the state of Virginia, to the head waters of the main branch of Kentucky; thence down the same to the mouth of Quicksand; thence a straight line to the fifty mile tree on the state road; thence along said road in a direction to Mount Sterling, to Black water; thence down the same to the mouth thereof; thence down Licking to the beginning."

It appears, that a ratio of five hundred qualified electors, gave a representation of sixty-two members, for the next house of representatives. The senators, were as one to four representatives.

Knox county, was taken from Lincoln—to have effect from the first Monday in June, 1800. "Beginning where the Pulaski line strikes the Tennessee line, and with the last mentioned line east to the top of Cumberland mountain; thence along said mountain to the Madison line, and with the same to a point due east of the branch of Kentucky river that the wilderness road goes down, thence up said branch to said road; thence with said road, to the aforesaid Madison line, and with the same to the head of Rockcastle river, and down the said river to the Pulaski line, and with that line to the beginning."

An act for incorporating the Frankfort bridge company, had for its object, the erection of a bridge across the Kentucky river opposite Frankfort. It expired without effect.

The "certain certificates," mentioned in the title of an act of this session, are those mentioned in the act of separation—for the redemption and payment of which, provision was now made.

Three divorces were authorized, by as many laws, on a jury's finding the facts alleged. All the complaints were on the part of the wives.

The county of NICHOLAS was created at this session, to commence, and have effect, from the 1st day of June, 1800—"beginning at the mouth of Fleming creek, and to run thence along the Fleming county line, to the mouth of the Flat fork of Johnson's fork of Licking; thence on a straight line to a

beech tree marked, six miles from the Lower Blue Licks, near the middle trace; thence a straight line to where the Bracken line crosses the said north fork; thence with the said Bracken line, to Licking river; thence up said river to the Bourbon and Harrison line; thence with the said line, so far that a line run parallel with the general course of that part of Licking river, which is included between the Upper Blue Licks, and the point where the Bourbon and Harrison line strikes the said river, shall cross the Limestone road, at an ash stump, near the Irish station, the beginning place of certain surveys made for Hawes and others; the said line to continue the same course to the Montgomery line; thence with the said line, to Licking river; and thence down said river to the beginning."

Eighty-eight acts, were passed at this session, the last expected to be held under the first constitution. Many were private, and merely personal—others to legalize what was illegally done—some relative to towns—and not a few concerning other local matters, of various kinds.

The receipts in the public treasury, for this year, were eleven thousand two hundred and thirty-four pounds; which with the balance of the last year, made fifteen thousand three hundred and sixty-four pounds. Expenditures, fourteen thousand seven hundred and three pounds. Balance, six hundred and sixty-one pounds.

A motion was made, to come to a resolution to vacate the seats of such members as were at the time judges, or justices, of the quarter session courts. It was postponed, or committed; the actual result has escaped research: the fact, however, of there being such members in the house, is conclusively implied. Whence results another conclusion, of no little importance—it is, that the *sovereign infallible judges and preservers of the constitution*, "the people" require to be rejudged, and revised: Inasmuch as it seems most clear, that quarter session judges are a part of the judiciary; and that a most material part of the constitution was violated, by electing them to seats in the legislature.



An act of this session authorized an appropriation of six thousand acres of vacant land south of Green river, for the use and emolument of manufacturers of wool, cotton, brass or iron, who should settle on it, at the rate of five families for each thousand acres, before the 1st of January, 1803, carry on their trade in good faith, and pay forty dollars the hundred acres in four equal annual payments. The execution of the act was placed under the care of trustees. It being, however, badly digested, improvident, and impracticable; it is believed its terms were not embraced, and that it expired under its own limitations without effect.

The clerk to the commissioners for adjusting Green River land claims, having received more money than he had accounted for, an act passed requiring him to account; and in case of failure, declared him subject to the penalties, which were prescribed for delinquent sheriffs. He still failing to account, was prosecuted for the penalties, and judgment rendered against him: from which he appealed, and was relieved; by the court's considering the law *ex post facto*, unconstitutional, and void; as it had an undoubted right to do.

It is worthy of remark, that this legislature passed an act for the appointment by the county courts, of inspectors, collectors, and *their deputies*, surveyors of the highways, constables, and county jailors; the act to have effect after the 1st of June, 1800; that was, under the new constitution; without perceiving any authority for it: that being the day on which, the constitution itself, that provided for their appointment under its own legislation, was to commence its operation. Perhaps a more palpable misconception of power, never entered into the heads of any law makers, before, or since. There being not even the colour of necessity for it; since it was declared in the schedule, that the officers then in appointment were to continue for the time expressed, unless displaced by the constitution; which those provided for by the act, were not; and moreover, the governor could make all appointments, to fill vacancies, when the other means failed.

The election law, passed by the same legislature, respecting the governor, &c. to organize the new government, being authorized by the convention, was in that respect correct.

With this session, ceased the legislative functions, under the first constitution; after having, in eleven sessions, added six hundred and fifty laws to the statute book. From sixty, to sixty three or four, of these, were concerning towns; although the forty-first, vested a power in the county courts, to establish towns, appoint trustees, &c. &c.

Occasional observations having been made, with a view to convey an idea to the reader, of the character of the session acts, nothing more of the kind will be added here. Whoever attends to the subject, will be struck with the frequent changes in the courts, and in the execution laws; which, if it were possible, should be fixed and immutable. The observer of the legislative course under the constitution, can but be equally affected, by the frequent occurrence of acts which violate private rights to real property, as well by their retroactive effects, as by vesting power in one or another, to sell lands belonging to infants, as well as those of adults, without their consent. *Relief*, also, of one kind or other, either to private individuals who should have been left to seek it in a court of law, or equity; or to public functionaries, who had violated the laws, and ran to the legislature to cover their ignorance or design from the consequences, by legalizing what was illegally done, makes a figure in the code; besides those acts of direct interference between creditor, and debtor, by means of replevy, and otherwise: which taken together as a body of evidence, goes to prove great defects in the political morality of the law makers, and separately, furnishes precedents for every species of irregular and incorrect legislation. Not that there are no good laws; there are certainly many; for at different times, different moral and political feelings have prevailed: but so predominant has been the disposition to change, that but few acts have escaped its ignorance, its love, its rage, or its malice.

The next legislation to be explored, will be under the new constitution; which, it is believed, offers no better security for the safety of private rights, or the consistency or intelligence of legislation, or the maintenance of public faith. But it shall first be seen, and then said, what it has brought forth.

It is not, however, to be understood, that this history has undertaken to enumerate, sum up, and balance, the good, and the evil, of legislation, for the thirty years and more, during which the government has been in operation. But, taking it for granted, that the country is entitled to a good government; that it possesses the materials for such an one; which, notwithstanding, it has not; it is one of the objects of this work, which will not be abandoned, so to connect observations with facts, as to satisfy the community, with whom it remains to correct legislation, that the way to have good laws, is to elect proper characters only, to make laws; an enterprise of hopeless achievement, under the present constitution; or so to change the constitution, as to ensure a government, as good in fact, as human frailty will admit: That is, one much better than the present.

CHAP. VIII.

*Bourbon resolutions—Census—Governor's communications, and Legislative proceedings—Mr. Jefferson, president of the United States—Circuit Courts abolished—New Orleans, port shut—Louisiana bought—District and General Courts abolished, and Circuit Courts established—Greenup, governor—Mr. Jefferson again president—Colonel Burr visits Kentucky—"Western World," published; Sebastian's pension—Burr's Intrigue—Various proceedings—Observations, &c. &c.*

[1800.] In the annals of 1800, it is thought, may be inserted, notices of a meeting of a portion of the citizens of Bourbon county; whose avowed object, was to take into consideration, the alarming situation of the country, occasioned by the great scarcity of MONEY; and to prevent, as far as possible, the "total ruin" of the citizens, by abstaining from a destructive intercourse with merchants. And to effect it, these good citizens entered into various resolutions—the first, and most important of which, is, as follows:

"That after the first day of April next, we will not purchase from merchants, traders, or others, any of the following enumerated imported manufactured articles, to wit: woollens, linens, cottons, silks, hats, shoes, saddles, sugars, or liquors, (wine for medicine excepted) unless the same can be purchased and paid for, in articles of the growth or manufacture of this state."

This is not exactly a non-intercourse with the atlantic states; even if it had been general, while it is believed to have been but very partial; it is, however, a proposed mean, in effect, for banishing money, from the country, under the absurd idea of rendering it more plenty, by starvation, or barter. As if to render money useless was the way to make it plenty.

It may be true, that before money was brought into use, exchanges, constituted the barter, or traffic, of rude tribes of uncivilized men. With money, of whatever it was made, commenced merchandise—for then there was a common measure, by which to regulate exchanges, and to liquidate balances.

Money, being once recognised, as the measure of the value of things, became hence their equivalent—in reality, their representative, and substitute: and by consequence, the object of desire, with all men, and in the same proportion, a stimulus to their industry, care, and economy. Not as a thing which they could eat, drink, or wear, or which would directly gratify any one appetite; but, either directly, or indirectly, convertible into any thing, and every thing, that a man could desire. How to obtain it, has therefore been a subject of perplexing inquiry, with political economists, and superficial legislators, in most civilized nations, for ages. The prudent man knows, that it is effected by industry, and care, under a government whose administration ensures punctuality in payments; and that otherwise, it eludes every inquiry. In vain, are non-importation and non-consumption associations, or laws. Absurd are combinations against merchants. Compel those who consume, to pay for what they buy, and their intercourse with merchants will never injure them; although they deal not in the exchange of articles, but sell for money only. Leave it to the grower or manufacturer of the article, and his merchant, to settle the terms of their dealing; and it will be adjusted, to their mutual convenience.

To limit consumption, or restrain commercial intercourse, between citizens of the same country, with the view of making money plenty, or of preventing the ruin of the people, is a mistake in policy, of the grossest kind. The people need but one sumptuary law; and that may be written in two words, "Pay punctually."

The next resolve of the Bourbon meeting, is the result of sound sense; they say, "We will encourage the raising of sheep, the cultivation of hemp, flax, and cotton—and promote home manufactures of every kind:" which with the addition of four words—"as far as prudent," would have been perfectly unexceptionable.

But there is no danger of too much being done in pursuance of the course suggested. It was not generally adopted then—nor even yet, is it overmuch practised.

On the 1st of June it is to be remembered, the second, called the *new*, constitution of Kentucky, took effect: it may be said, without even an emotion, much less commotion. The last governor, under the first constitution, was elected to the same office, under the second; the lieutenant governor, a new officer, and ex-officio, speaker of the senate, who was Alexander S. Bullitt, and also the members of the general assembly, had been elected also at the same time, agreeably to the ordinance of the convention, without opposition to the change. Such is the benign influence of the great republican principle of free states, "that the will of the majority expressed according to the constitution, is the law of the land, to which all are in duty bound to submit." This is the principle, which every citizen of Kentucky should impress upon his own heart, and upon the heart of his son. It is the equivalent of declaring unconstitutional laws, void; and of admitting the constitution, to be paramount, to all acts of the legislature; and although alterable by a majority of the whole people, yet in no other way, than that prescribed in the constitution. Give these principles complete effect—place them under the guarantee of good faith, supported by adequate penal sanctions, with a firm executive, and judiciary, to enforce them; and a constitution may be preserved, without difficulty, as to good citizens, and in defiance of the bad. Than which, nothing in political science, nor in social intercourse, is more important. It is the foundation of confidence; as the constitution itself is the foundation of all legal obligation; contradistinguished from moral obligation. Why is moral obligation, ever during and ever binding, on mankind, in all situations? It is, because it has its foundation in a perfect and permanent law, prescribed by our creator. Being a constitution of cause, and effect, which requires no amendment, and which no majority can alter. While the obligation of that, which can be altered, may be impaired, perverted, or annihilated. And hence the importance of giving to the constitution of government, all the stability of which it is susceptible. Not only because it is itself a compact, in which the whole people have agreed with each man, and each man with the whole people, that they reciprocally

will keep it inviolate on their respective parts; but, because, a violation, implies a disregard of a solemn promise, and evinces a breach of good faith.

Again—This original contract may be considered as the prolific parent, whence springs every other contract, between man and man, having a legal existence, or obligatory force; while the validity, the effect, and value, of these obligations, depend essentially upon the stability, it may be said the inviolability, of the constitution; and that, upon the reverence and awe, which are entertained habitually, for this primary compact, by the *majority* of the people with whom it may ultimately rest, to alter, amend, or violate it, with impunity.

From these considerations, may be perceived, the immense importance of cherishing an invariable respect for the constitution, and of carefully abstaining from any, and every, infraction of its rules, both affirmative, and negative. This reflection can but derive great additional weight from the admonitions of experience—which teach, that those who disrespect their constitution, have but little regard for contracts of any kind, which they can evade. And when a majority of those who make the laws, are contemners of contracts, both public and private, the state, or nation, for whom they legislate, must be sustained by a miracle, if it does not fall into discredit and decline, shame, and embarrassment.

The new constitution, compared with that which it superseded, exhibited several material alterations, in conformity to the spirit of democracy, which had demanded the change; and which are worthy of observation. The great objection to the former constitution, was to the aristocratic features, as they were absurdly called by the jealous and envious demagogues of the day, who produced the change, because they had not the merit or patience to become governor, or senators, when they were to be chosen by men of intelligence acting on oath. The people at large, and especially the most intelligent part of them, were well contented with that part, which introduced electors, chosen by the people, for the purpose of choosing a governor, and senators, and which was accused of aristocracy. A term of odious import in America universally, and in Ken-

tucky particularly: often maliciously applied, to those who have become distinguished for having more land, or money, than the generality of their neighbours; unless they are very liberal towards those who choose to call themselves, and be called, democrats; and moreover, if they possess talents, with riches, they are to devote them also, to the use of the democracy, in order to obtain its favour. They are then taken into the bosom of the order, and stand secure from the application of this obnoxious term, "aristocrat," however rich, enterprising, or assuming, they may be. A term, the more obviously and grossly abused, as there is nothing in the constitution, or in the country, that bears any affinity to aristocracy: unless it is, that some men, are distinguished for having more lands, or money, than the generality of the community; which seems to be an unavoidable consequence of the structure of society, where industry is rewarded, and property even promised protection: and which may with equal propriety be applied to those members of the community, who have in a higher degree than common, either talents, or learning, or knowledge. But why, in a community, where industry and frugality, are universally pursued, with the laudable view, as it is thought, of bettering conditions, and of acquiring riches, those who have succeeded, should be nicknamed, and abused, by those who have failed in the same pursuit, is only to be accounted for by the envy, jealousy, and malice, inherent in man's nature; and which, a race of beings, common to all democratic republics, called *demagogues*, incessantly stir up, for electioneering purposes, in the minds of the less informed part of the community; who very willingly take the name of democrats. And hence the term "aristocrats," which means in Europe, a "privileged order;" though having no place in the United States, has been introduced, and applied here, as the opponent, and the adversary, of the term "democrats," or "people without privileges." Whereas, in Kentucky, they are "the people with privileges;" if having equal political rights, without equal property, or interests, and the actual control of the government, may be ranked as PRIVILEGES. And surely, they



may be so considered, when exercised by them to their exclusive emolument, and the detrusion of those who are stigmatized by the term, *ARISTOCRATS*.

Such were the terms in use, under the old constitution; and such still continue to be in use, under the present: notwithstanding, the popular reason, that is, the one given by demagogues, or "popularity hunters," for the change of constitution, was to "abolish aristocracy." Now, as the constitution contained no *aristocracy*—that is, "privileged order," it is not to be supposed, that the change eradicated any. While it is to be confessed, that it destroyed some of the precautions, feeble as they were, for filling one branch of the legislature, and the executive department, with the persons best qualified to discharge the duties of those offices. The cause which moved the change, is demonstrated in the changes themselves. The electors of governor, and senators, were abolished, and these offices were in future to be filled by the direct vote of the people themselves; who gave up the election of sheriffs and coroners, which they held under the first constitution, to other agents; and they introduced a lieutenant governor, to be chosen also by themselves, who was to fill the place of the speaker of the senate, formerly elected by the senate itself. From these facts, the spirit and object of the changes, are distinctly seen. The other main outlines, are substantially the same, in both constitutions; being sufficiently democratic for the purposes of demagogues. The powers of the government, are distinguished into three denominations, of legislative, executive, and judicial; and these, as before, vested in three separate departments: the first is also divided into a senate, and house of representatives, to be chosen by the same voters, without regard to character, property, or interest; a mere representative democracy, or government of the majority of the most active citizens. The checks are apparent only, not real; on paper, not in the actual state of things. It promises security for life, liberty, and *property*—it is fallacious and delusive; it stops short at the second step, if not sooner: And *property* is left insecure; because its safety, instead of being placed in the

hands of those who have it, is deposited in the care and disposal of those who have less of it, and want more. There is no adequate check to the opposite tendencies of poor and rich: a distinction, however inaccurately marked it may be, which exists in every civilized community; dependent on principles in men's nature, which never can be annihilated; upon facts, which despotism or sophistry may disguise, or pervert, but can never extinguish; a lambent flame, which the unnatural government of Sparta, smothered in vain, for seven hundred years: It is the desire of bettering present condition—it is the love of property—or of money, if you please—for the sake of the gratifications which it brings, or confers.

This principle of such vital importance in society, which on one side, is to get, on the other, to keep, has been misconceived, or designedly perverted, in the formation of the constitution of Kentucky; and as a consequence, instead of its being checked, and restrained from encroachment, by the one party, and the other, it is secured to the one, without an adequate security to the other. The majority are left to prey upon the minority. Neither capital nor enterprise are secured—which they should be, to the whole extent of their energies, and of their acquisitions; by placing their highest, as well as their lowest exertions, under the superintendence and control of those who possess them, who feel their influence, and know how to estimate their merit, in the highest degree; instead of which, they have been placed at the mercy, and left dependent on the caprice of ignorance, envy, jealousy, and malice, to which the doors of the two houses of the legislature have been thrown open, without placing in either, a sufficient guard. And where it is still enough to cry out, "aristocracy," and down with any institution in the country, dependent on a monied capital. These observations, are extorted from experience and conviction, at the shrine of regret, and in the hope of their producing reflection, inquiry, and reform.

It is not intended, at this place, to illustrate by minute details: "the bank of Kentucky," rivalled and destroyed by forty

democratic banks, is but one, among similar instances, of the want of regard to contracts, to private interest, and to public faith—no other reference will be made at present. While it is not pretended that the state of the country in 1824, was to have been foreseen, and predicted, in 1800: yet it was even then seen and declared, that the constitution was destitute of adequate checks; “that property was not protected in sufficient extent”—nor enterprise encouraged, by ensuring to it the enjoyment of its full success. The cry of *aristocracy*, had been heard—its effects had been witnessed in the prostration of the only part in the first constitution, which offered any thing like that check, of which the second was totally destitute. From that time to this, nothing better was to have been expected, from any convention, that could have been convened. Some hope was entertained from the general government, both as an example for imitation, and a check on legislative error; that is found to reach but few cases; and hardly any one, merely between citizens: while the results of its example, have not been conciliatory, nor hitherto very beneficial.

It is thought necessary, to terminate a train of reflections which might be protracted, but which some may think will be more appropriate after a detail of facts, to support it, than thus to forestall them.

It is to be remarked however, that the state of society in Kentucky, had undergone considerable change in the course of the last eight years; and especially, from the end of the war. There was a greater disparity between the extremes of the aggregate society; with an increased proportion of citizens of little or no property, or of new claims to land, not paid for, and who were ranked by themselves with the poor. While on the other hand, those who possessed the means, were accommodating themselves with good houses, and domestic comforts; which produced a contrast, not readily overlooked by the eyes of envy or jealousy.

The population had much increased. The census of this year placed the white people at 179,875—the slaves, both black and mulatto, at 40,343—in all 220,959—including free persons of

colour. Increase for the last ten years, 118,742 free white persons, 28,913 slaves, and 741 free persons of colour in all—the tables not-particularizing the increase of the latter.

Strong party feelings frequently excited, and often expressed at elections, and otherwise, had familiarized the people to each other, and made them acquainted with those who aspired to give them opinions, by which to lead them; and to furnish them with party discriminations, or watchwords, whereby to rally, or unite them: whence they were easily brought to act on party subjects. While the grand division was now, as it had been for some time into, “federalists,” friends, and supporters of the federal government, and the constitution of the United States—and “anti-federalists,” or, as they called themselves, “republicans,” opponents of the federal government, as they had been, to the adoption of the constitution. No matter what the service to be performed, or the question to be decided, was; to establish upon a candidate that he was a *federalist*, was the equivalent of his exclusion from office.

No session of the legislature immediately succeeded the commencement of the new administration; the governor reappointed his former secretary, and assumed the executive functions, now familiar to him. While the rumours of accommodation with France, had much softened the features of party rancour against Mr. Adams; and the leaders, making sure of having their favourite, Mr. Jefferson, for the next president, began to felicitate themselves upon the success of their scheme for revolutionizing the administration of the general government.

The legislature assembled on the 3d of November; and while the senate sat down under the presidency of the lieutenant governor, whom the sovereign people, had elected for it, the house of representatives, chose John Breckenridge, speaker, without a division.

The 4th of the month, the governor made his communications in person, to both houses: confining himself almost exclusively to local topics, he gave a favourable representation of the general aspect of public affairs; suggested deficiencies in the revenue—which he imputed to the state of our trade,

inclining *eastwardly*, instead of *westwardly*--and proposed as a remedy, the giving of premiums to divert it from the eastern atlantic, to the western rivers--Ohio and Mississippi. As if it were necessary in a free country, to hire men to desert their interests, or to pay them, for pursuing those interests. When will governors and legislators, learn, that commerce when unoppressed by laws, and left free to seek its own channels, seldom mistakes the wrong for the right? but like the medium of its exchanges, soon finds its level; and still sooner, its advantages. While the idea, of its sending out produce, and bringing home money only, will, as it hitherto has done, if extended to any considerable amount, prove fallacious. One commercial country desires to dispose of its surplus produce, as well as another; and such is the basis of commerce. Money, is the mere auxiliary; serving to regulate the relative values, the exchanges, and pay balances. Suppose, however, the whole surplus produce of Kentucky, be the amount what it may, shipped to New Orleans, for a market--where there were such commodities, as were consumed in this country--and also money enough to pay for the whole: what would the merchant of Kentucky do? Certainly he would ascertain, whether he could gain most by taking his return cargo, in such consumable commodities, as he could sell on a profit, on his return home; or by taking it in money, with which he could buy of the same kind of commodities, a greater quantity in Philadelphia, New York, or Baltimore, and on the sale of which at home, he could, in the circle of the adventure, make a still greater profit: and according to the result of the inquiry, he would act:--profit being the object of commerce with the merchant; he of course would take that kind of cargo home, which would yield him the most gain, in the least time. Suppose the determination in favour of the consumable commodities--then he would bring no money: and what advantage would the revenue derive from the trade to New Orleans alone? None is perceived. Or if he brings money, and hence takes it to the city of Philadelphia, and there lays it out in merchandise or commodities, which are brought to the country, and sold for consumption--

what does the revenue gain more, than if the return cargo from Orleans, had been composed of the same, or similar goods? Not an atom. It may therefore be inferred, very fairly, from the real state of things; that the deficiency in the revenue did not proceed from the cause suggested by the governor; and that his remedy was equally erroneous. While the obvious causes of the paucity of the public treasury, lay—*first*, in the deficiency of the revenue laws—*second*, in the inadequacy of the taxes—*third*, the delinquencies of sheriffs—*fourth*, the indulgences extended to defaulters—*fifth*, the unwillingness, arising from the fear of losing popularity, on the part of the law makers, to raise the taxes—and *lastly*, a habit on the part of the people, of expressing discontent at paying taxes, and of living up to, and over, their income; a habit readily superinduced in any country by the causes, already enumerated; and the system of relaxation, which here ensued, and generally ensues, an irregular, relieving, and injudicious course of legislation; as that of Kentucky, had even then been. Would you have a full treasury, good citizens, and a prosperous community—then adjust your laws to these ends; and have them regularly, and invariably executed. Would you avoid delinquencies of every kind; then *punish*, and not *relieve* delinquents of any kind: but especially defaulting collectors.

As to commerce, certain it is, that it did not bring the less money from New Orleans, on account of its not importing merchandise from thence; or because our consumption was supplied from Philadelphia, New York, or Baltimore. But the contrary. What then is the advantage of importing through the channel of export? The answer is—it renders the commerce more direct—it lessens the price of freight, by shortening the voyage—it enables the merchant to import the more goods; to sell the cheaper—and of course to have more consumed: but in the case of Kentucky, she having nothing to do with the imposts, or duties, it adds nothing to the revenue, nor ever can: but by leaving the trade and commerce of the country free to find their own channels, and own returns, inspire them with confidence, which is the soul of enterprise; and hence

give to them the beneficial operation of enriching the community; by stimulating its industry, and enlarging its consumptive powers; in the gratification of which the rewards of industry consist: while, as the community increases its wealth, it adds to its means of paying a revenue to the state: the end proposed.

The first act of this session, was one to authorize the marshal of the district, under the federal system, to use the jails of the several counties, as the sheriffs, might do, to secure persons, in custody. Thereby manifesting a better temper towards the general government, than on some former occasions, which have been noticed: but whether the effect of a more enlarged, and enlightened, policy, or the sensitive anticipation of the expected change of party, in the councils of the nation, will be left to the reader's conjecture.

"An act to incorporate the share holders and directors, of the Lexington, Georgetown, and Danville, Libraries:" may be taken as an indication of the state of literature—at least, of the general disposition to foster, and encourage its cultivation.

Trustees, were incorporated, for the purpose of establishing an academy in the county of Franklin, who were vested with the lands, formerly surveyed for such an institution. This was located in Frankfort, and called "the Kentucky Seminary." But being infected with the country disease—multiplicity, and bad government—it has languished, and revived alternately, in the building erected for it—until it has neither acting trustee, teacher, nor student, as it is believed.

Wayne county, was erected, to have maturity, from and after the 1st day of March, 1801. "Beginning at the mouth of Indian creek, on the Cumberland river, and running up the same by Sanduskie's cabin to the road that leads from Captain Thomas Johnson's, to Major Alexander McFarland's on Indian creek; thence to the top of the Poplar mountain; thence with the same, till it intersects the state line; thence east with said line, so far that a north line will strike the mouth of Rock creek, on the main south fork of Cumberland river; thence down the same to main Cumberland river; then down that to the beginning."

Persons holding offices, incompatible with a seat in the legislature, to resign, before they could be eligible to either house; was a provision of this session: which illustrates itself.

"An act allowing aliens to hold lands in *fee simple* in this commonwealth," was a palpable inroad upon the established laws of the land; as incorrect in sound policy, and good faith, towards the government of the United States, as it might be accommodating to particular individuals. To perceive the propriety of the foregoing observation, as to aliens, it is only necessary to recollect, that the supreme control of them, their rights, and privileges, is in the congress of the United States; and that a fee simple in the soil, is, in effect, the equivalent of citizenship: which none but congress can grant.

"An act regulating certain officers' salaries;" allowed, annually, to the treasurer the sum of \$800; to the secretary \$550; to the attorney general \$850; to the auditor \$1100; to the register \$1100.

Another act, of dubious character, "concerning the salaries of certain judges," was of this session. It directed an abatement from the fixed salary of any judge, of any court, for failing to attend at any term of his court; without he would make oath before the auditor of public accounts, that his absence from court, had been occasioned by sickness, or unavoidable accident; in which case, he was to receive his full salary—otherwise, the auditor was set to work, on the clerk's certificate, of the number of terms, at which the judge had attended, and which his honour, was required to exhibit; in order to determine, by the rule of proportion, what part of the annual salary, he should award, to the suppliant judge: the clause in the constitution, that "they, (the judges,) shall at stated times, receive for their services, an adequate compensation, to be fixed, by law;" to the contrary notwithstanding.

On this subject, it is thought worthy of remark, that, connecting the importance of having a judiciary, at all times, as independent of the legislature, "as good behaviour," which is the tenure by which judges hold their commissions, will per-



mit, or enable, them to be; with the above constitutional declaration, it is believed, that the salary of a judge, once "fixed by law," is no longer contingent; or alterable, even by the legislative body. For if it were not fixed, which means certain, stable, permanent, not variable, when "fixed by law;" there would be no effective operation resulting from the constitution; and the judge would be left as open, and as much exposed, to the influence of the legislature, as if the constitution had been wholly silent on the subject. But, because the constitution is not silent; has spoken, and conveys a plain meaning, it is therefore to have effect. And that effect, to be genuine, puts the salary of each judge, when once "fixed by law," out of the law making power, forever after, as long as the judge remains in office; it is not to be diminished—neither can it be increased: Such is the import of the word "fixed," in the constitution.

How far a judge can be rendered responsible for neglecting his duty, as a failure to attend, and hold court, would be; is quite another question: the solution of which, presents no difficulty; as, most undoubtedly, it forms one branch of bad behaviour; and hence opposed to "good behaviour," might be a good cause of removal from office.

The court of appeals, by an act of this session, to hold three terms in each year.

Trustees of academies, seminaries, and county courts, having charge of lands, for literary purposes, were authorized to divert one-eighth, in each case, from the objects of former appropriations, and to apply it to others, as they might think best calculated to promote the interest of those several institutions.

Seventy-six acts were passed at this session; without furnishing, it is believed, any new character of improvement, or deterioration. The constitution was *new*; but the people had undergone no material change, in point of intelligence, principle, or practice. The same spirit of legislation seemed to prevail now, as formerly: the new acts, were but imitations of the old ones: nor did the constitution, appear to afford any restraint,

to those who would not be restrained by that which had been thrown away.

Thus, without mentioning an act giving further time to return plat, &c. we have seen the constitution violated, in the case of the judges—besides, that among the seventy-six acts of the session, there were some of a private nature, affecting the rights of property; sundries, for relief, of various kinds; and one, for a divorce, on a jury's finding the facts charged.

[1801.] It was now ascertained, that Mr. Jefferson, and Mr. Burr, had the majority of electoral votes, for president, and vice president, of the United States, over Mr. Adams, and Mr. Pinkney, the federal candidates. The votes stood at seventy-three, for the two first named; and for the two latter, sixty-five, sixty-four; Mr. Adams, having the preference: a precaution which had not been observed on the other side; in consequence of which, the two highest on the list of votes, being tied, were placed before the house of representatives, for choice, in a portentous, and, as it turned out, awful balance of power, if not of intrigue and corruption. Of the two equals, with their party, the federalists, preferred Burr, and voted for him: whence no election was made, for many days; the country thus inducing, an eventful, and momentous, crisis. It might be modesty, or it might be patriotism; but certainly, it was mistaken policy, in Mr. Burr, at the time, to make avowals, and to pursue a course, which private arrangements, might require; but which public facts, did not demand. The anti-federalists, his own partisans, had presented him to the American nation, and held him up to the world, as the equal of Mr. Jefferson: with the *federalists*, who were in no manner bound by the party arrangements, or secret understandings, of their adversaries; it was but a choice of evils—they considered Burr as president, the least of the two; and in voting for him, followed the plain dictate of judgment. They thought him, in point of talents, equal to Mr. Jefferson; possessed of more firmness, more fairness, more honour; less devoted to France—consequently more American, than that gentleman; while each of these, were justifiable grounds of preference. It was perfectly anticipa-

ted, that should Mr. Jefferson become the president of the United States, that his enmity to the constitution, and still more to its administration, by, and in conjunction with President Washington, his party spirit, his personal ambition, his prepossessions for French policy, and Frenchmen, would induce him, as fast as plausible opportunities occurred, to change the previously established system of administration; even in principle, where he dared; but in name, and appearance, wherever his ingenuity might suggest, and his duplicity, and influence, enable him to effect, such purpose. It was, therefore, not without a struggle, they opposed his election; it was not without reluctance, they were bound to acquiesce in it; which, however, they did—scourge, as it proved to them, and the country. But this is a theme for the historian of the United States.

The success of Mr. Jefferson, was the success of the party, which had ever been opposed to the adoption, and administration, of the constitution of the United States; however at times it might have been awed into silence, on the termination of an insurrection, or the detected treachery, of some of its leaders.

The result of the recent election, had furnished a subject for general jubilee; which was demonstrated in Kentucky, by feasting, toasting, singing, and dancing; on the first proof of the electoral vote—thus, celebrated in Frankfort, 3d of February, 1801, by the following, among other toasts:

“Thomas Jefferson, and Aaron Burr; the president, and vice president, elect.”

“The United States: May their republican government endure while the earth revolves on its axis.”

The 4th of March succeeding, the new president, was installed, if the term is allowable; and delivered a speech, to a crowded audience, of both parties—whom, it would appear, he desired to please; and certainly might have deceived, had not his character been known. It was in this address, that he talked of *brethren of the same family, of the rights of the minority*; and so pathetically exclaimed, “We are all republicans, we are all federalists!”

The United States, had, previous to this period, encountered, and surmounted, many and various difficulties, and perils; some, of the most grave, others, of the most menacing, aspect. The purity of her principles, and the wisdom of her policy, had borne her, triumphantly, through every storm, and every assault—so that, even Mr. Jefferson, is a witness, that her twelve years' existence, had proved a successful experiment in the cause of liberty, and free government. She had, in the course of this time, terminated her wars, and adjusted her differences, by beneficial treaties, with all the nations, great and small, with whom she had been at variance; Tripoli excepted—she had disbanded her temporary army, and dismissed, sold, or dismantled, her supernumerary ships—she had drawn order, out of chaos; and substituted repletion, for atrophy, in the revenue department; always, of delicate, and difficult, management—she had established public credit, on a firm basis; and for national good faith, vied with the most faithful—she was at PEACE with the world, and respected throughout the nations of the earth; when, as if Mr. Jefferson, had, honestly, and voluntarily, contributed, to produce such a state of things, he, who had been distinguished, and who grounded his merit, with his party, and with France, and Frenchmen, upon his opposition to Washington, and those efficient men, who aided and supported him, and his immediate successor, in placing their country, in so eligible a situation; was made their successor;—and readily availed himself of his official power, and influence, to strip his predecessors, and to cover himself, with their robes of honour. Such, among other things, are the effects of revolutions, in popular majorities.

It would not be useless were it practicable, to estimate the individual changes of party, or opinion, whereby the “federalists,” lost—the “anti-federalists” gained, the majority of electoral votes. One conjecture may be hazarded, with great probability, which is, that they were men of but little information, whose minds were unduly influenced, by some of the thousand misrepresentations, which had been practised on them. The whole number, was, in the ratio of sixty-five, to seventy-three.

If the difference between seventy-three, and sixty-five, the amount of electoral votes given on the one side, and the other, be taken as the criterion, by which to compute the whole number of changes, and applied to the aggregate population, the total amount would be seen. A document, worthy a statistical research, would be one, which should render an exact account, of the changed individuals, from *federal* to *anti-federal*, voters; with a true statement, of their ages, residence, occupation, moral habits, and real circumstances in life, could it be rendered effectual, and thus circumstantial.

Suffice it for the present, to say, that the change for the time was radical—the principles of Washington, the patron of federalists, were superseded, and contrasted, by those of Jefferson, the patron of anti-federalists. Hereafter the subject may claim further attention.

The legislature assembled in November, and went to law making, as usual. While the first act to be noticed, is one for the division of Green county: whence sprang Adair—"Beginning on the Green river, ten miles on a straight line above Green court house; thence a line so as to strike a point one-quarter of a mile due north from Major Daniel Trabue's house; thence a line to strike the Barren county line so as to leave James Mitchell one-quarter of a mile in the county of Green; thence with the Barren line to Cumberland county line; thence with said line to Wayne county line, and with said line to Pulaski county line; thence with said line, to Lincoln county line; thence with the same to the ridge dividing the waters of the Rolling fork from Casey's creek; thence to the head of the ridge between Casey's creek and Robinson's creek; thence with the said ridge to Green river; thence with the same to the beginning: to commence from and after the first day of April, 1802."

"An act concerning the boundary line between this state, and the state of Tennessee," was passed: the object of which, was, by means of mutual commissioners, to ascertain, adjust, and settle, the line described. Nothing definitive was done.

Justices of the peace, who should become sheriffs, or coroners, thereby superseded their former offices, respectively: the last *pro tem.*; the first, permanently.

Owners of salt works, had *privileges* granted them. The subject, rather than the object, of this act, has occasioned it to be noticed: inasmuch, as the question of what is privilege, and what not, within, the meaning of the constitutional prohibition, has been frequently agitated, and will merit a discussion at some convenient time, after other similar cases, shall have occurred. This act in particular, authorized the owner of any salt works, who should desire to convey his water over the lands of another, to wood for fuel; to do it, on a writ of *ad quod damnum*, and the instrumentality of the county court.

The court of appeals, was reduced to two terms in each year; by an act of this session.

*An act to revise the criminal common law*; about which, the lieutenant governor, had expressed great solicitude, was passed; revisers appointed, and the work executed, at considerable expense: which, whatever might be its merit, it is believed has not attained general use; or may even have become obsolete.

An attempt was authorized by act of the legislature to improve the navigation of the Kentucky river, by private subscription: it did not succeed. Although a corporation was created, and tolls allowed on the transit of boats, up and down the river.

Replevy, allowed to the defendants, in the case of magistrates' judgments over twenty-five shillings, and under five pounds, as in cases of executions from the courts.

The penal laws were amended; by "An act to amend the act entitled 'An act to amend the penal laws,' &c." This act occupied fifteen or sixteen pages, and forty-four sections—details inadmissible.

Among the other, multifarious acts of this session, like unto those of other sessions, was one "authorizing a lottery in the town of Millersburgh;" to promote, as suggested, lead works, at, or near, that place. Sixty-eight new laws, were added to the code.

It ought not to be omitted, that at the commencement of the session, the governor, under the influence of the general administration, had addressed the legislature, in the most cheerful style of prospective triumph, inspired by views of general politics—which however, could not disguise the exhausted state, of the commonwealth's treasury; the many capital crimes which had been committed; the expediency of determining what laws were repealed; the propriety of arming the militia, &c. &c.: implying, that these things had been neglected, and called for remedies; notwithstanding, the hundreds of laws, which had been passed.

The 8th of December Mr. Jefferson, president of the United States, sent his written message to congress—which as a further testimonial from him, that the complicated affairs of the nation, had been wisely and successfully conducted, when they were transferred to him and his supporters, is a document, that deserves to be more generally known; and still better understood. This history, cannot indulge an illustration, for reasons already suggested. But it demands, the remark, that the same message also intimated the changes, and deteriorations, which the author contemplated. That which followed in the judiciary being one of them, had a most deleterious, and mortifying effect in Kentucky, upon the minds of reflecting men, who were not wholly absorbed in party feelings. An able court, was dismissed; and the whole judicial authority, of the United States, to be exercised, in the country, again devolved on Judge Innis—a man of inferior mental faculties; even, had he not been contaminated by foreign, and domestic, intrigue. Great indeed was the change—gloomy the prospect, to intelligent men of correct and honourable sentiments. In abolishing the circuit courts, and dismissing the judges by act of congress, the party of Mr. Jefferson, gave it was thought, convincing evidence, of their hostility to the constitution of the United States; which at a single blow, they were supposed, thus to overturn, in one of its vital parts—the judiciary.

Some of those who supported the act for abolishing the circuit courts, alarmed as it would seem, at the suggestion, that

by the same power, they might abolish the supreme court; and hence *destroy the third department of the government*; attempted to shew a distinction, in the constitutional provisions, for the two orders of courts; affecting to consider, the circuit courts, as creatures of the legislature, while they admitted, the court of appeals, was the designated, and appropriate, offspring of the constitution. If indeed, this idea was well founded—and as a consequence, the *supreme court*, could not be abolished, or deprived of its organization, by an act of congress, it might be acquiesced in; as giving to the department, all the independence of which it is susceptible, in a population of rapid growth. But certain it is, that there is nothing in the constitution of the United States, which gives to the *supreme court*, any degree of security, more than is possessed, by a circuit, or district court. And without doubt, that court, would have found it so, if it had declared the act of congress, abolishing the circuit courts, unconstitutional; and thereby, obstructed its execution. The abolition act, would doubtless have been amended, and made to embrace the “supreme court,” within its annihilating provisions—however “obvious and palpable,” the violation of the constitution, might have been to the opposition, in point of fact.

Certain it is, as well from the nature of the subject, as from the provisions in the constitution, that it was desired, and intended, to give stability, to the judiciary department; and personal confidence to conscientiously upright judges, as well those of the inferior as of the supreme court. With these views, the constitution is made to declare, that, “The judicial power of the United States, shall be vested in *one supreme court*, and in such inferior courts as the congress may from time, to time *ordain and establish*.” Going on thence, to place the judges of both descriptions of courts, exactly on the same footing, as to tenure of office, and compensation: as in the clause, cited, the different grades, of courts, were as parts of the same system, put under the same arrangement, in regard to their exemption from, the extinguishing power of congress. In a few words, if the supreme court of the United States, being



once established, cannot be abolished; neither can an inferior court; for they are both embraced in the constitution, as to the power of congress, in terms, exactly equivalent; in relation to stability. What, let it be asked, in the cited clause, gives stability to either, superior, or inferior court? The answer, must be, its being "ordained, and established;" by an act of congress. Since, without such an act, no court, of either description, can get into existence; and to limit the operation of those words, to the inferior court, or courts, would in effect, leave "the supreme court," destitute of even that protection; as well as all other security: although requiring it the most, as being the head of the department; and therefore the most exposed to the other co-departments; from which only, it has to apprehend annoyance. But does the words, "ordain and establish," or either of them, afford any security to either court, in point of permanency? That, either, and especially both, should do it, seems the genuine and necessary effect, of their use. Their meaning is, to *perpetuate*, not *abolish*: when connected with the words; "from time to time," as in the constitution; they mean, at different times; in succession of time; not all at once; but as they may be necessary. The constitution does not provide that congress, shall, or *may*, from time to time *abolish*, the supreme, and inferior courts, of the United States, and ordain, and establish others, in their stead—or leave the country without them. And unless it can be made to appear, that to "ordain, and establish," is the equivalent of *abolishing* and *annihilating*; while it is believed, they are exactly the reverse, there can be no authority found in the constitution of the United States, to countenance, much less, authorize, the act of 1801-2, by which the circuit courts were abolished. So much has been said of the courts, as distinguishable from the judges, who organize them: and now, a word, as to these organs of the system, the judges.

It is apparent, that the constitution was intended to be consistent on the subject of the judiciary; and that to a permanent system of courts, it meant to add independent judges, in order that the constitution, and laws, made conformably to it, and

no others, should be administered, with firmness, and good faith. And this permanency of system, and firmness of the judges, became the more important, and necessary to be ensured, in proportion to the magnitude of the interests, both of the states, and of the United States, as also of those internal, and external rights and claims, which were probably to be involved in their decisions. All this is apparent, even from what has been seen; and may be rendered still more so, by reflections on the tenure of office "during good behaviour," the security of compensation held out to the judges, and the duty, implying power, *of supporting the constitution*; enjoined on them in their official oath, by declaring laws of congress, and even state constitutions, contrary to the constitution and laws of the United States, void, and of no effect. How totally repugnant to these ideas, is that of a rightful power in congress, to abolish these courts, or any of them, by an act of the *majority*. What court, subject to the will of a majority of legislators, dare declare an act of that majority, a nullity? The very proposition creates a self-evident political solecism; a palpable absurdity. And which, if it was deducible from the constitution, would justly stigmatize its makers with fatuity. But the constitution forbids the suggestion of incongruity. It is true, it places each and every judge, who shall be accused of having violated the condition on which he holds his office, "his good behaviour," subject to be impeached, by one branch of congress, and tried by the other—but then, two-thirds, not a bare majority, must concur, to effect a removal of the accused from office. And this, it would seem, should convince any man of common sense, that the whole system of courts, including the very judge who may have been impeached, (or suppose them all impeached) was not constitutionally, at the will and disposal of a bare majority of congress. No: for the constitution requires two-thirds to remove from office.

The more attention has been paid to the repeal of the act of congress, establishing circuit courts, because of its analogy to the conduct of the legislature of Kentucky—and because of the conspicuous part which the Hon. John Breckenridge, one

of her senators, the author and advocate of the resolutions on the subjects of the alien and sedition laws, already noticed, acted in this grand assault on the constitution. It was to him, the cause of much eulogium from his party; and with a few other things of the kind, conducted him, by the grace and favour of President Jefferson, to the office of attorney general, for the United States. And thus it is, that one perversion begets another.

It will be confessed, that the part taken by Mr. Breckinridge in relation to the courts, was countenanced and sustained by the previous conduct of the Kentucky legislature respecting their own courts; they having, at the same time, for their foundation and security, a constitution similar to that of the United States. Whence is to be seen, the same mode of viewing constitutions of government; the same cast of character; the same party spirit, in the head, and in the limbs; in the whole, and in the parts: a froward disposition; and a will, when found in a majority of such men, not to be restrained by constitutional checks on paper only; but requiring those of opposing interests, feelings, and sympathies, to be placed in a situation where they can operate with a countervailing effect. That is, in an *other majority*, of a different moral and political character, with a negative, on the proceedings of the former.

[1802.] The transactions in Kentucky, of 1802, are the next to claim attention. Passing over sundry acts about towns, and other local matters, the first to be noticed, is one "for establishing inspections of cotton." This act does not appear to have been amended, and was probably of but little use, as neither the quantity, nor quality, of Kentucky cotton, could at any time have made any respectable figure in foreign markets: nor does the state at this day supply the home demand.

The next, "An act to incorporate the Kentucky Insurance company," has had a much more extensive effect. This act, is an instance of legislating upon motives, and for purposes not avowed, by those who take the lead. As to very many of the followers, on complicated questions, it has been supposed, by good observers, that they neither had motives nor purposes,

in their votes. Of the British house of commons, consisting then of between five and six hundred members, it was said by one of them, that there were about thirty who thought; and that the business of the house was done by half a dozen or less. But it will not be presumed, that the British parliament was at any time equal to the legislature of Kentucky, consisting of less than one hundred members; much less will the thinking men in the latter be proportioned by those in the former: but be all this as it may, the law in question, when in the shape of a bill on its passage, was held up as very proper and necessary, to encourage the raising and exporting the produce of the country, by incorporating the "Insurance company"—an association of patriotic gentlemen, of Lexington and Louisville, principally, if not altogether—who would devote their funds, to ensure boats and cargoes, on the Ohio and Mississippi. Much care was taken in penning the bill, to insert all the proper clauses, to render the act competent to its objects. The bill was extended to twenty-five sections, occupying six or seven pages, drawn with great care, and "fair to behold," when it passed both houses, and received the governor's approbation.

There was, however, by some unaccountable means or other, a thing neither seen nor suspected, by the majority, a BANK OF CIRCULATION infused into its composition. And although the operator was afterwards accused of practising a deception upon his coadjutors, the dexterity and effect with which it was done, ensured to him, the full approbation of his employers, and constituents. The secret was this: The "Insurance company," was authorized to take and give bonds, bills, notes, and obligations, in the course of their business; also to receive, and pass them by *assignment*; "and such of the notes as are payable to bearer, shall be negotiable and assignable by *delivery* only." This was the pregnant clause which brought forth the bank. The notes payable to *bearer*, were made *negotiable by delivery*. It was only to make all *payable to bearer*, and all *might pass by delivery*. And when vested with these properties, they were so much like bank bills, that it required much less genius for trade and negotiation than Lexington possessed,

to convert the "Kentucky Insurance company," into a BANK CORPORATION; and thus supersede the objects of its institution; which was soon done: and thus Kentucky came by her first bank. Hereafter it may be shewn, how the rest came into existence.

It may be proper to remark, that the charter was to continue to the 1st of January, 1818; during which time no other insurance company was to receive a charter. An incautious stipulation, as it seems not to have been reciprocal.

Once more, was the country doomed to undergo a radical change in her inferior courts. Says an act of this session: "the present district courts, and general court, shall be, and are hereby ABOLISHED." The next clause, enacted that there "should be circuit courts."

The judges of the abolished courts, being men with the reputation of understanding the law, and thus thrown out of office, furnished materials, with which in part, to build up the circuit courts.

There was to be one circuit court in each county, to be held by a judge appointed for the purpose, who possessed a knowledge of the law: and for his *assistants*, with an equal right, there were to be two others in each court, who were not required to know either law or equity; yet with jurisdiction over both: and who at any time could overrule their president.

Thus realizing in the judicial department, the image which Nebuchadnezzar saw in his dream; part brass, and part clay. These new courts were vested with the jurisdictions which had been exercised by the abolished courts, and were to be governed by their rules, &c.: to regulate all which, only took twelve or thirteen pages, composed of thirty-six sections. Details are out of the question; yet a few particulars are to be mentioned. *The lawyer judges*, to be called "circuit judges," were to constitute a general court, and there agree what circuits each was to attend: they were to receive seven hundred and fifty dollars each, for an annual salary; while their "help meets" were to be paid two dollars a day, during their attendance, respectively.

The practice which ensued under this system, had the effect to retard business, and in other respects proved pernicious. If the knowing judge happened to desire to rule his right and left hand man, and they were willing to be ruled, they sanctioned his opinions, and matters went on smoothly, tardy as might be their pace—it was rather, however, the cause of despatch. But when the assistants conceited they knew as much, or more, than their president, they were commonly refractory, and kept him in check: he being in general a resident in town, or an itinerant on his circuit, and a lodger in town, where the court was held, could attend early, or late; while his brother judges, residing in most cases, in the country, remained at home for breakfast; then came to town, put up their horses at the tavern, took a round of smoking or chatting; then to court; and if any thing had been done, were ready to rehear, and confirm, or reverse it. For it is to be remembered, that the presiding, or “circuit, judge,” could hold court in the absence of his assistants; subject, nevertheless, to have every thing he did, undone, by them: and which soon taught him to do nothing when they were away, unless he had previously obtained the control, over one of them at least.

And they, sure of their two dollars a day, if their names were entered on the minute book, took special care to have, each, his own, entered at some time in the day. In the long days, they did more—but again, and again, has the court adjourned to dinner, before a single jury cause was opened; and probably, a common case, occupied the day. In the populous counties, such was the accumulation of business, and the tardiness of proceedings, that causes were years on the docket, which in a correct course of adjudication, should have been tried at the term next after the process was returned executed. Thus suiters were compelled to attend from term, to term, and from day to day, during each term for years, before they could obtain a trial at law: while the complainant in chancery was still more unfortunate; although in general, the suits, being about land titles, were the most important; and demanding the first attention, were put off to the last. A single statement

of a common fact, will illustrate this narrative. In these large counties the courts, for years did not clear their dockets; while it often happened, that the causes set for the first day, were not finished for two or three days; and one set for the third, might be taken up the sixth day, &c. &c.: the parties and witnesses bound the while, to attendance.

Thus have the people of Kentucky been compelled to sue for, seek after justice; and wait upon courts, often changed, inadequately filled, and frequently unnecessarily dilatory, at an expense and loss of time, which few other people could have afforded; and fewer still, it is probable, would have borne, without ascertaining the cause, and correcting it, in its legislation; the ostensible source of the evil.

The courts, no doubt, were deficient in their organization—as in the quarter sessions system; or in their number—as in the district scheme: or still more defective, in their composition, and number of circuits, under the circuit arrangement: the dismissal of the assistant judges, whatever may be said of the constitutionality of the act, was an improvement of the court, and conducive to the despatch of business. Was there in fact, half as many more circuits, and the duration, of the terms apportioned to the current business; aided by an act of assembly, or rule of court, requiring, the punctual and regular attendance of the attorneys; the good effects would soon be both seen and felt by the courts, the suiters and the public. For law business like all other business, must languish when neglected, and must be neglected when extended to different interfering courts.

The government had been in operation two years, and no justice's fees had yet been sanctioned by legislation, when at this session, the "squires" rallied a majority, who passed an act for paying them, for *judicial*, as well as other services. The fees allowed, are so similar to those heretofore recited, that they need not be repeated: while it may be remarked, that the fee for attending to take depositions, was raised from seventy-five cents, to one dollar.

"An act to suppress riots, routs, and unlawful assemblies of the people," was passed; extending the jurisdiction of a single

justice, to try and punish "breaches of the peace," without exception. Under this act, a justice, taking the sheriff, under sheriff, or constable, and the power of the county if he deemed it necessary, with him, could, repairing to the scene of offence, arrest and commit the parties, or any of them; and there, upon calling a jury of twelve men, by means of his attendant officer, proceed to try the accused, and if found guilty, to punish by fine not exceeding twenty dollars; and in default of payment, by imprisonment not exceeding ten days.

The Virginia act, from which the foregoing was taken, being itself taken from a British statute, did not extend to breaches of the peace, other than such as might be included in the above-named riots, routs, and unlawful assemblies; while the power of arresting and trying the alleged offence was given to three justices, or two at least, with a final resort to the general court. It has been said, that the law of Kentucky has been abused, or at least, applied to criminal cases of a capital nature, in order to screen the culprit from a more solemn trial, and a more ignominious punishment, adapted to his crime. But this, if at all, must have been in cases extending to life or limb; but not to those punishable in the penitentiary; for the constitution only protects from a second trial, those whose life or limb has been in jeopardy, by a first or former trial; of course, not those who might be punished by confinement in the penitentiary; nor should it extend to any case of a mere breach of the peace, without riot, rout, &c.

The difficulty, if not impossibility, of reconciling this law to the fourth article of the constitution; first and third sections, creates another objection of still greater force than that above suggested.

The first, gives to *courts* the judicial power of the commonwealth. And by this grant, the *whole* judicial power passes, or must be passed, to *courts*, and to *courts only*; or nothing passes, or can be passed to them: but if nothing passes, or can be passed by virtue of the section, then it is nugatory. It however, cannot be nugatory—because it is a distinct substantive



part of the constitution; of clear expression, and important meaning; affecting nothing less than the third branch of the government. The proposition, that the first section of the fourth article of the constitution, is operative, by vesting power in the legislature, to establish a *supreme court*, and such *inferior courts*, as from time to time they may think proper, may therefore be asserted and maintained.—Next, as to courts. What are they? Those appertaining to the judiciary only, will be treated of. A court, then, consists, or is constituted, of place and persons. As a place, it is, or it means, where justice is administered on trial between parties, by judgment, or decree: as to persons, it applies, or is applied, to one man, or to several men, who is, or are, authorized, in the place appointed, to make the judgment or decree, by which justice is dispensed, in the exercise of the legitimate judicial power of the state. Then courts, as places, are to be “erected and established” by law. While the inference, that in no other place than those appointed, or erected and established as aforesaid, or some one of them, can a court be held, or the judiciary power of the state be legally exercised. Now, as to those who may exercise the judiciary power; they, in the language of the constitution, are to be judges, either of the “supreme,” or “inferior” courts—they are to hold their offices *during good behaviour*—for ill behaviour, they may be put out—but while they are in office, they are to receive for their services, an adequate compensation, “to be fixed by law.”

Not to protract this analysis, it will now be inferred, that *justices of the peace* are not *ex officio* judges of any court, although expressly provided for, in the same article of the constitution, as that which ordains, there shall be judges; it is certain they are not in that instrument, even made judges of the county courts; notwithstanding one is made necessary in each county, by express declaration. Nay, “justices of the peace” are distinguished from “judges,” by the constitution, in several important particulars; as for example: The “judges are in virtue of their offices, conservators of the peace throughout the

state;" the "justices" depend upon an act of the legislature, for a similar power, even in their own counties: the "judges" are to have competent salaries, *fixed by law*; the "justices" have no such provision for them: the "judges," constituting one co-ordinate department of the government, could not become members of another; while the "justices," possessed of no judiciary power, might become members of the legislature. Observations have already been made to shew the impropriety of this commixture of offices; they need not be repeated. It is enough for the present purpose, to shew, from the constitution, that as a *court only*, could they exercise judiciary power under the constitution.

It is admitted, that a court may be erected and established, in a private, or in a public, house; or under a tree, or in a field, or a forest, by force of legislative enactment. But it might be successfully contended, that no place is a court, for the exercise of judicial power, until it is pointed out, *erected*, and *established*, for that purpose. Were it otherwise, then any place, and every place, would be a court, where judicial power might be exercised. A conclusion which might produce some personal inconvenience; as courts have the power of punishing contempts, in their presence; besides, other consequences wholly inadmissible, might be claimed. In the correct order of things, courts, as to place, are, in the language of the constitution, first "*erected and established*," and then a judge or judges appointed, to fill or organize them. That the place lawfully erected, and the judge lawfully appointed, coming together at the time, and in the manner prescribed by law, constitute a *court*, for the exercise of judiciary power; and that there is no other court of a civil character, known to the constitution of Kentucky, are conclusions now affirmed.

Upon a careful perusal of the constitution, it will be obvious, that it intended the judiciary power of the government should be exercised in courts, by judges, openly and publicly; that the whole system of private or domestic exercise of the judiciary power, by justices of the peace, is unwarranted by the

constitution, has grown out of old practices, produced under a different order of things, which was intended to be corrected by the constitution; but which has been thwarted, perverted, and corrupted, by an incorrect blending, and uniting of "the justice of the peace judges," with the *law makers* of the state: itself a complete perversion of the constitution; and without doubt, the prolific parent of a numerous progeny of other perversions. Nothing is so seductive to legislators as their personal interests; nothing more deceptive to such men, than their own consciences.

What, it may be asked, are the petty fees of a justice of the peace? One answer is, a great matter to petty men. Another, is, that many laws have been passed about them: and this shews that they are viewed as matters of importance. Again; they have been the subject of contest under both constitutions—thus protracting debates, and lengthening sessions, at much expense: and this is further evidence of the estimation in which they are held. The allowance, and even payment of those fees, have been but the smaller part of the evil resulting from the admission of so numerous a phalanx of the judiciary into the legislative body, possessing as they did, very incompetent knowledge of the laws; as ambitious of power, as they were avaricious of money; and as grasping after jurisdiction, as they were strenuous for fees.

Thus, as has been seen; after engrossing by successive acts of legislation, a great and varied range of civil jurisdiction, they have been let into that of a criminal nature; which at the same time has been so illy defined, as to admit of easy abuse: a natural consequence of men's making laws relating principally to their own powers and duties. Thus opening a door which will let in the most dangerous and pernicious abuse.

Should it be inquired, what is the specific character, and appropriate office of a "justice of the peace," as named in the constitution? it may be answered, they are in that view merely ministerial. There were to be a competent number in each county. Their particular duties as *peace officers*, were,

to be prescribed to them by the legislature. So were there to be sheriffs, and coroners; one of each, in every county: but it is denied, that either of them, although "peace officers," was vested with any judiciary authority, by the constitution. The same conclusion, is affirmed, of the "justices of the peace." They were first to become separately, or collectively, a judge or judges, of a court, or courts, *erected* and *established*, by the legislature, before any judiciary power could be vested in them: They could only become judges, by a constitutional appointment, commission, and qualification.

This history has already shewn, how the justice of the peace came to be substituted for, and confounded with, the judge, under the first constitution; while similar causes have continued to operate, and similar effects to follow, of course. And might an observation be hazarded on the subject, it could be said with much confidence, that it has been the source of great evil; and after inducing repetition on repetition of that species of sinister motive in legislation, which gives correct principles, "the go by," (a legislative phrase,) and attaches itself to popularity, and expedient, has been a prime and leading cause of that instability, and disorder, so manifest in the judiciary system of the country—and of its present embarrassed condition. For when the water is poisoned at the spring, it conveys off with the stream the qualities of the fountain.

But the mere "justice of the peace," is neither court nor judge, nor in the situation to receive the investment of judicial power agreeably to the constitution: for that has declared explicitly, that it shall be vested in courts: and it follows necessarily, in courts only. For if it could be vested in any other than courts, the constitution might be evaded, and totally defeated: a consequence which can never be admitted, as flowing from the constitution itself.

What, it may be asked, is meant by the judiciary, or judicial power? The answer is: It is that power of government, which is distinguishable, and in the constitution is distinguished, from the legislative, and executive powers—it is the power, or right of *hearing, and determining controversies, between adverse parties,*

*when brought before them according to law.* While this power, always of the most interesting nature to individuals, has been expressly given to courts, and is by a necessary inference, withheld from all others; it could not without a violation of the constitution, be given to, or vested in, justices of the peace, or any other individuals, not constituting a court; although they might be ministerial officers. And when it is considered that courts, are to be organized by judges, nominated by the governor, approved by the senate, commissioned during good behaviour, and that they have the appointment of their own clerks, respectively; and who are constitutional officers; there is no difficulty, in pronouncing, that a justice of the peace, is no court, either civil, or criminal: nor can they, singly, or collectively, be constituted a court, by act of assembly. But this theory admits of doubt. Other consequences are too obvious, to need a statement.

“An act directing in what manner the trustees of the Transylvania university, may move against delinquent surveyors”—shews legislative attention to this institution, then labouring for funds.

The penal laws were amended by an act of eight pages, and twenty-four sections, in substance a repetition: In addition to which was also passed, another act further amending the penal laws, and occupying about an equal space on the statute book.

It is to be noticed, that the first of these acts, repeals, “all English statutes, and laws, relating to witchcraft, to false and pretended prophecies; and to religious doctrines, and observances; also any statute which imposes a penalty for exercising a trade without having served an apprenticeship,” &c. &c. Most of which, were probably contravened by positive institutions, or from total disuse had become obsolete; until thus revived, in order to feel the “moral force” of legislative power. Nothing, truly, more commendable than caution, and care, among law makers:

The circuit court law, passed at this session, was amended, by an act of six or seven pages; with the very appropriate and laudable intention, of carrying the amended act into effect.

In addition to the acts alluded to, were many others passed at this session—not less than ten, for the express purpose of *relief*—nearly as many for the *benefit* of particular individuals—others, to legalize acts, before unlawful, &c. &c.; in all eighty-one.

The account of revenue for the year, will next be brought into view. Payments into the treasury,

By sheriffs of the several counties, for taxes,	\$35,401 96 7
By clerks, for process, &c. . . . .	3,514 44 5
By register, for nonresidents' lands, . . . . .	10,834 46 2
By same, for fees of office, . . . . .	899 9 0
Nonresidents, . . . . .	2,647 61 9
By gate-keeper turnpike wilderness road . . . . .	100 00 0
By Green R'r. settlers for lands taken, \$8485 69 } . . . . .	9,395 83 3
Same, paid in certificates, 910 14 }	
By secretary of state, tax on seals, . . . . .	51 30 0
Total amount of receipts, . . . . .	\$62,814 71 7

Disbursements, on all accounts, too numerous to be recited, . . . . . \$53,531 92 8

The following delinquent list, is published as a characteristic trait, for the curious inquirer, or calculating politician. It embraces the defalcations of revenue, apparent in the auditor's office, from 1793, the first revenue year, under the government of Kentucky, to the year 1801; inclusive: shewing, however, the aggregate only, by counties, during the whole period; as they remained unpaid, the 31st of October, 1802.

*Sheriffs and Collectors delinquent.*

Counties.		Counties.	
Bourbon	\$1,353 82 1	Henderson	\$345 93 0
Bracken	172 26 0	Jefferson	21 9 0
Barren	660 23 0	Jessamine	702 97 0
Bullitt	1,079 36 0	Lincoln	1,302 80 0
Clarke	4,195 82 0	Logan	826 57 0
Campbell	1,264 59 0	Livingston	203 40 0
Christian	548 73 0	Mercer	595 68 0
Cumberland	143 2 0	Mason	9,648 67 0
Fayette	228 55 0	Madison	239 23 0
Floyd	62 58 0	Montgomery	373 34 0
Franklin	1,070 62 0	Nelson	1,095 10 0

Counties.		Counties.	
Fleming	39 77 0	Pulaski	173 65 0
Green	413 87 0	Pendleton	62 73 0
Garrard	148 83 0	Scott	1,150 88 0
Gallatin	480 47 0	Shelby	815 22 0
Hardin	36 53 0	Washington	858 31 0
Harrison	715 79 0	Warren	560 75 0
Henry	34 52 0	Woodford	451 6 0

*Clerks of Courts, delinquent.*

Clerk of Green	\$13 22 0	Clk. of Green dist.	\$67 22 0
Do. Logan	116 38 0	Do. Franklin	90 73 0
Do. Woodford	104 2 5	Do. Madison	128 24 0
Green R. settlers	1929 00 0	Register for non-	
Clk. of Logan dist.	33 25 0	residents	34,173 99 5
Do. Bourbon	333 32 0		

In the course of the year, France, having become the ally of Spain, American citizens, were, by proclamation, deprived of their rights of trade and deposit at New Orleans. The alarm being given, it spread through the country, and soon produced the necessary inquiry, by the president. The official agents of both France, and Spain, resident at Washington, disavowed the authority of a proclamation published by the intendant of his Catholic Majesty on that subject: while it was believed by many, that he had been instigated by Buonaparte; who thus meant to feel the pulse of the American government. No event could have been more injurious to Kentucky, than to be thus excluded from the exercise of a right admitted, and actually enjoyed under a treaty; which, it had been asserted with clamour, was essential to her growth, and almost to her existence. It is true, great sensation was felt; the spirit of the country was roused; and had it been made the cause of war by the government, Kentuckians would have been found among the foremost in the field. But Mr. Jefferson was president of the United States, and force, not a remedy, for a violated right, in his creed, where France, and Buonaparte, might be concerned. Mr. Monroe was sent envoy to Paris, not Madrid, the better to understand this thing, and to seek an accommodation. It was soon ascertained, that Buonaparte claimed Louisiana, and that it was for sale. A purchase was effected, from the grand despot,

the master spirit; "who wanted money, and must have it." And thus, the right of navigation, and deposite, were secured; and peace, the while, preserved. This history necessarily excludes details, which would be appropriate only, in that, of the United States. But before the purchase was announced—

[1803.] The year 1803, succeeded, in the order of computation, and the seasons; to witness the efforts of the different parties in congress, on the very interesting subject of the Mississippi: and how instances of former federal conduct, which had been virulently censured, were now taken for examples, and imitated; though not avowed, nor applauded, by President Jefferson, and his adherents—the former calumniators. A single instance, among others, will suffice; and that shall consist of the comparison between the appointment of Mr. Monroe, and that of Mr. Jay: they are parallels. The conduct of the dominant party, on the two occasions, if it be desired to ascertain principle, or estimate character, furnished evidence against itself, not to be mistaken. But what is of more importance, Louisiana being about to be transferred to France, and the court of Spain, unwilling to incur any responsibility, or run any further risk, *as to its possession*, strongly menaced, restored the rights of navigation, and deposite, agreeably to treaty, without Buonaparte's order; and thus removed the cause of complaint, and excitement. Some of the federalists, had been for making, the breach of treaty, at once, so palpable, and so injurious, the occasion of immediate war on the Spanish territory: they were thought in error, by acting against their own party, precepts, and example; which prescribed a previous application for redress. While their opponents, deviating from sentiments formerly avowed, became right, by opposition. Not intending to convey the idea, that to be in opposition, was the motive to it; for another will be presented, in which the inducements may be found.

From Mr. Jefferson, the party took its tone; and without regard to Washington's example, had not his disposition been pacific from nature, it would have been rendered such, by his knowledge, that Buonaparte, was to adjust the trembling



balance. There is no hesitation in saying, that whatever motive preponderated, the course pursued by the president, was substantially correct; and that the purchase of the country, at fifteen millions of dollars, as the alternative of war, had success been, what it rarely is, certain; was wise, and cheap. While, however, the event was uncertain, Kentucky was deeply agitated, and prepared for conflict.

In the month of October congress had assembled, and received confirmation from the president, that the rights of the citizens by treaty, to navigate the Mississippi, and use the port at Orleans, were not only restored, but confirmed, by a purchase of the country.

On the 20th of December, 1803, William C. Claiborne, governor of the Mississippi territory, by proclamation, made known that the government of the United States, was in possession of Louisiana—and thus was consummated the treaty of the 30th of April of the same year. An event of great importance to the United States in general, and to Kentucky, in particular. Then, and yet, beneficial; but opening prospects of boundless extent: and such as formerly, and now present perplexing problems, to many of those politicians of the east, whose ardent wishes had been, and still are for a limited territory, whose extended and ample parts, while they filled up an irresistible whole, should also, in their compactness of form, have embraced, the principle of an eternal duration. But it is obvious, that a territory without bounds, is also one, without a centre. And as in natural bodies, were it not for the centripetal force, the centrifugal would prevail; so it may well be apprehended, as to political bodies, that by extent, the principle of attraction, which is but a common sympathy, founded on a perception of common interest, may be converted into that of repulsion, and terminate in dissolution.

What sympathy can exist, beyond the colonial state, between the future inhabitants, of the river, Columbia, and the country of the Pacific ocean, and those of the Atlantic? But this page is too narrow for a discussion of the subject, and it is foregone,

The year, otherwise, seems to have passed on without furnishing topics for this history, until the session of the legislature in November. And even that field, is unusually barren.

The first act to be noticed, is one for the division of Mason county; and the establishment of GREENUP—to take effect from and after the first day of February next ensuing; that is to say, 1804—"Beginning on the Ohio river opposite the mouth of the Scioto river, thence a course so as to include all the branches of Tygert's creek, until it intersects the Fleming line; thence with the Fleming line to the line of Floyd county; thence with the line of Floyd, to Big Sandy, and down that to the Ohio, and with the Ohio, to the beginning."

An act vesting in the United States exclusive jurisdiction over five acres of land, at and on the upper side of the mouth of Licking, for the purpose of an arsenal; reserving to the state the right of reclaiming refugees from justice; was passed.

The representation of the state was regulated at this session; upon a ratio of one representative for every six hundred qualified electors; which gave sixty-three members to the house of representatives. An increase of one member only, since the last apportionment.

The amendment, proposed to the constitution of the United States, relative to the election of president and vice president, was adopted and ratified by an act of this year.

The taxes were raised on land, twelve and a half cents per hundred acres of first rate land, and in a similar proportion, on the other classes.

Four separate acts for divorces, were passed—two on the application of the husbands, on complaint that their wives, respectively had left them; and in one case was living in adultery—in the other, had wasted his goods: in the remaining two cases, the wives complained of desertion, and a state of adultery with other women. Facts were required to be found by a jury, to authorize a judgment, for the plaintiff.

This session, added seventy-eight acts to the code: partaking largely of the local, personal, and *relief* kind; with some

relative to courts, inspections, &c., which have not been noticed; as amendments, and repetitions, are too frequent for insertion.

Amount of revenue for the year, terminating the 4th of November, 1803. To receipts, including two thousand four hundred and twenty-four dollars and some cents, in the treasury—fifty-eight thousand, six hundred and thirty-three dollars, fifty cents, five mills. Disbursements, fifty-seven thousand, sixty-two dollars, sixty-nine cents, eight mills—leaving, one thousand, five hundred and seventy dollars, ninety-five cents and seven mills, in the treasury.

[1804.] The year 1804, may be anticipated, as one of a pleasing aspect. For although the present dominant party, pursuing the dictates of their policy, and gratifying the feelings of their hearts, in relation to the *federalists*, found a majority in the house of representatives, to impeach Judge Chase, a member of the supreme court, of the United States; yet he was acquitted by the senate, as will be further seen.

In February, a *republican caucus*, was held in Washington city, for the purpose of nominating candidates for president and vice president of the United States—John Breckenridge of Kentucky, had twenty votes; George Clinton, of New York, however, obtained a large majority, for vice president:—Mr. Jefferson, was unrivalled for the presidency. And so the nomination, became a preordination, to the people, and to the electors. If a conjecture might be hazarded on this subject—the first, would be, that without such nomination, and in cases where there will be three, or more, candidates for the presidency, the election, will ever devolve on the house of representatives: the second, is, that the intermediate machinery of electors, might be dispensed with, to advantage: and the third—that the second congress, in each president's administration, should, within the first three days of its first session, openly, and publicly, by votes to be placed on the journal, nominate two persons, for the presidency—to be voted for by the people, unless another was, or others were preferred; and in the event of no two having a majority, of all the votes

actually given, he who had a majority, if any one, should be the president; while the congress, should, choose one, from the remaining two highest, on the poll, to be vice president. But if no one had a majority, of all the popular votes, then the president, and vice president, should, by discriminating votes, be chosen by the senate alone, from the three who had the greater number of the people's votes. It is left for politicians to develop the principles, and effects of this system of choosing those important officers—and, if, at the same time, they can project one, better calculated to guard against corrupt intrigue, and to ensure the desired result, they are invited to set it forth demonstratively.

In the month of March, the governor of the commonwealth, formally by proclamation, discharged the militia, who had volunteered in pursuance of a requisition of the preceding November, for the expected invasion of Orleans; with commendations for their patriotism, and promptitude. And once more, peace, with unclouded brow, smiled over the United States.

In this year, Christopher Greenup, Esq. being elected governor, took the oaths of office on the first Wednesday in September: and thence proceeded to appoint John Rowan, Esq. "secretary."

It had been expected that he would have entered into the executive office, on the preceding Wednesday, being the 28th of August; but the constitution presenting doubts, by an apparent incongruity, the installation was deferred. The cause of the doubt, is found in the incautious phraseology of the fifth section of the first article, which follows, viz:

"He, (the governor,) shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election, on which he shall be chosen," &c.

Had the constitution have stopped at "chosen," the meaning is plain, and the governor elect, might, without doubt have qualified and gone into office, on the 27th of August; being the fourth Tuesday, after the commencement of his election; the first, being the 7th of the month: and the election having be-

gan on Monday, the 6th of the same month: but the constitution proceeds, after "chosen," to say, "and shall continue in the execution thereof until the end of four weeks, next succeeding the election of his successor," &c.: and thus, is produced, the inconsistency; there being, necessarily, twenty-eight days in *four weeks*—while twenty-two days, may include *four Tuesdays*—besides the difference between the beginning and the end of the election; which includes three days. So that the going out of office, of the predecessor, and coming into office, of the successor, do not correspond; but interfere with each other, for a week at least. And this continues to produce a difficulty. Which might be obviated by the following principles of construction, that are believed to be applicable and correct.

In the first place, it is to be recollected, that by the constitution, the governor is elected for *four years*; and the expressions used, necessarily imply, for that "term," or length of time *only*: Not merely by reason of the rule that the expression of one thing affirmatively, is the exclusion of all other like things; but because, if the term is extended one day beyond the *four years*, by the same principle, or provision, it may be extended to the next general election; unless restrained by the clause following, viz: next after his *successor*, "and until his successor shall have taken the oaths or affirmations prescribed by the constitution." Now there should be no question, but that these words would operate on the incumbent governor, where his successor had taken the oaths or affirmations required, *on, before, or after the fourth Tuesday after the commencement of the election at which he was chosen governor*; unless the term of *four years*, was effectively protracted for a week at least, by the clause already quoted above; and which apparently gives the governor in office, *four weeks next succeeding the election of his successor*, to remain in office. But if it does so, he may remain in office more than *four years*—the term for which he was elected; notwithstanding, his successor may have taken the oaths prescribed to him. Again—If the quadrennial term can

be protracted, beyond the four years for which a governor was elected, because his successor had not, at the end of that period, taken the oaths or affirmations, then if such successor should die, or decline accepting the office—very possible cases—it might be contended, for any thing yet produced from the constitution, that the incumbent might hold the office, at least until the next general election: that would be, in all, eight years.

Such are the inferences deducible from the section of the third article of the constitution. Owing to the inadvertency, if not "obvious and palpable," yet reducible to certainty, by a little investigation, of the mistaking four Tuesdays, for the equivalent of four weeks, by computing the time when the new governor should come into office, from the *beginning* of the election; and the time when the old governor should go out of office, from the *end* of the same election, of three days' continuance, and always including a Tuesday; in fine, from failing to use identical expressions to convey ideas intended to be identical—at least, in their operation and effect.

If it is required by the rules of legitimate construction, to reject a detected mistake in order to make practical sense in law, or gospel; so it is also in a constitution. And the only way to get rid of the difficulty, ever and anon, presented to our governors, after an election, is to reduce the continuance in office at the end of the term, to the "fourth Tuesday," after the commencement of an election, by rejecting "*four weeks*," as being a mistaken expression; and no less repugnant to the other provision in the section, than it is to that declaration in the second section, which carves out, and constitutes the term of *four years*, for the existence of the gubernatorial office. This once established, the difficulty, as to this point, would no longer exist.

On the 5th of November, the legislature assembled; and the day following, Tuesday the 6th, the governor made his communications to both houses; and they soon after proceeded to law mending, as usual.

The following extracts and purview, contain the information conveyed,

"Gentlemen of the Senate, and Gentlemen of the House of Representatives:—

"Permit me to avail myself of this, as the earliest and most fit opportunity of expressing to you, and through you, to your and my constituents, the freemen of this state; the grateful sense in which I hold their late and very general expression of confidence, in my election to the chief magistracy; and of assuring you and them, that to deserve their confidence, and to discharge with fidelity the high trust reposed; as it is the object of my first wish, so it shall be the subject of my best and most devoted energies."

"That information, gentlemen, which it is my duty to communicate concerning the state of the commonwealth, must necessarily be circumscribed from the short time in which it has been my privilege to make the appropriate inquiries. I am happy however, to be able to say, that the commonwealth is in a prosperous and flourishing state—progressing in agriculture, manufactures, and commerce—in harmony with her sister states—pursuing like them, those principles of genuine republicanism which as they minister to good order and social happiness in each state, strengthen the cords of our confederacy, and promote the prosperity and grandeur of the American nation; like them she is emulous of becoming a prominent and weighty link in the federative chain; nor can her pretensions to conspicuity in the union be thought visionary by those who consider her present attainments, and judge of the future, from the past: But a few years ago, within the recollection doubtless of many of you, was this country a wilderness, unvisited by civilization or science—Now science, civilization, commerce, and all the arts which facilitate and sweeten human intercourse, not only exist in an advanced state, but are cherished and promoted by our government. Commerce, without which a pacific nation may be wise, virtuous, and happy, but never splendid, has already, notwithstanding the late occlusion of the port of Orleans, and our tenure by courtesy, of the Mississippi, unfurled her sails on our rivers, and rode in our harbors—a pleasing presage: Now that those obstacles are removed by the late acquisition of Louisiana, may we not expect her amplest influence."

"We are not less happy, gentlemen, in our civil than in our commercial and other relations: there seems to exist a love of order, a prevailing respect for the constituted authorities, and a growing disposition to support and aid them in the due execution of their respective functions. The laws in the general seem to have been competent to their purposes: no very signal infraction of them has marked the present year.

"Criminal offences have not been multiplied—on the contrary, it is believed they have been more rare in the present than in former years: May we not hope that by a continued vigilance of legislation, the catalogue of offenders will be gradually diminished, and that description of people taught that their best policy and truest interest is, in a strict observance of the laws, moral and municipal. This object so important in a political, and so desirable in a benevolent point of view, cannot I am persuaded be promoted by any mean, so effectual as by the attention of the legislature to the judiciary establishment, and those laws which direct the mode of proceeding in criminal as well as civil cases: of this subject, gentlemen, let me solicit your particular consideration; it is one of primary importance: for I am persuaded it is essential to the wellbeing of any government, that its judiciary be enlightened, virtuous and independent; that its system of jurisprudence be not only well concerted, but stable in its texture, and of such durable aspect as to conciliate confidence; that the power of the judges be well defined, and their salaries competent."

"Gentlemen: Believing as I do that in a government like ours, it is essential as well for the purpose of quelling faction, and enforcing the laws, as repelling invasions, to have a well organized militia; let me also solicit your attention to the laws on that subject."

There was in the speech, a complaint of a deficiency in the revenue; and a recommendation, that those who had forfeited their land, by not entering it for taxation, should have the land restored, on entering it, and paying the taxes and costs. The public collectors were charged with negligence, if not fraud, in



their department. Recurrence is had to the present state of the country, as presenting images of hope and happiness—says that he has spent the prime of his life in it, and expects to make it the asylum of his declining age. And in the spirit of these sentiments, the governor takes his leave; and retires.

The first act to be noticed, is one, for the relief of Clarinda Allington. She had been a prisoner with the Cherokee Indians, and as she alleged, compelled by a chief to marry him, and have three children by him; but deserting with her children, she had taken refuge in Kentucky: and on application to the general assembly for assistance, she was allowed an ANNUITY for three years. This is the first instance of a *pension*, if so it may be called, found in the legislative record.

A library company formed in Lancaster, was incorporated by an act of this session.

“An act to amend and repeal in part, an act entitled ‘An act incorporating the Lexington Insurance company;’” is cited, as evidence of legislative practice upon corporations, as well as other contracts, affecting private rights.

“An act to incorporate the Ohio Canal company,” takes date at this session: having for its object a canal at Louisville. It has not been operative.

The promulgation of the opinions of the court of appeals, was provided for by law. The method adopted, was by directing the clerk of the court to furnish the public printer with a copy, to be by him printed; and copies for judges, &c. delivered to the secretary; &c. &c.

Acts for five or six divorces, founded upon the common complaint, in such cases, desertion, and adultery, were passed; requiring, nevertheless, the facts to be found, by a jury.

Other acts for *relief*, of both a public and private nature, were enacted; to the amount of about one hundred and six. A portion of these, were to legalize acts of courts, or officers; some to remove seats of justice; others concerning towns, roads, obstructions of water courses, inspections, &c. &c. beyond the span of this history; and but repetition, or useless variations, in many instances, were they inserted.

The disbursements at the treasury, in the revenue year ending 3d of November, about forty-nine thousand dollars: there remaining upwards of three thousand dollars, of warrants for money unpaid; for want of the cash. Amount of delinquences, the same day, at the treasury, on the part of sheriffs, &c. &c. in all, ninety-six thousand three hundred and thirty-four dollars, and twenty-two cents. This was the accumulation of ten years.

[1805.] The year 1805, is next to be interrogated for its historical productions.

It is not unworthy of notice, that the second term of Mr. Jefferson's presidency, commenced on the 4th of March, 1805; with George Clinton, vice president. Colonel Burr, the counterbalance of Mr. Jefferson, four years previous, by the united vote of the same party; had, in the preceding year, detached the party, or himself, by irreverend speeches, affecting Mr. Jefferson's administration, &c. &c.; else, possibly, his killing Col. Hamilton in the same year, might have ensured to him, a repetition of the vice presidency. But, although the one offence was pardonable, the other was not; and Burr, after finding himself exiled, from party, and from home, abandoned himself to profligate schemes, and visionary greatness: in the pursuit of which, he turned his attention westwardly. Of which, more will be said in its place.

The trial of Judge Chase, was brought to a close, and he acquitted. There were thirty-four senators, who voted on the eight articles of impeachment. The question upon each, was, "Guilty, or not guilty?" John Breckenridge, was against him on seven of the charges; John Brown, the other Kentucky senator, on "four." The highest number for "guilty," on any charge, was nineteen;—while it required twenty-two, to convict him. And thus ended the efforts of the party, then, and still, "dominant," against the federal judiciary. Had success attended the effort against Judge Chase, there were then well grounded apprehensions, that the rest would have been put to a similar trial, and shared the like fate: But the failure as to him, checked the malignant fever, and stopped the epidemic.

May the 25th, Colonel Burr was in Frankfort; having been preceded by conjectures, that he was one of a company who were about to open a canal on the Indiana side, to pass the falls of Ohio, and a rumour that he was appointed governor of Louisiana. He rather affected privacy;—but was seen, admired, and talked of, by some of his choice spirits. His stay was short. He was on the look-out; and progressed southwardly: visiting, it is believed, Nashville, Natchez, New Orleans, St. Louis, Vincennes, and Ohio; previous to his return to Lexington, in August, on his way to the eastward. In the mean time, it was said, that the government of Indiana had not only passed a law for the canal, but had also authorized this ostensible “canal company,” to become bankers, on the canal stock; and that John Brown, of Frankfort, was concerned in the project. This may be considered, as the first scheme devised for the purpose of raising money, to further the ambitious projects of Colonel Burr, in the western country. It did not succeed very well; “canal stock,” commanding but little cash. While the wanderings of Colonel Burr, a bankrupt in honest fame, and real fortune, had excited suspicion, and extorted remark, in different parts of the United States. But the further manifestation of his project, is postponed, until the next year.

Monday, the 5th of November, the legislature assembled, by a quorum of each department; and proceeded to business. In the first week of the session, John Adair, Esq. was elected to the senate of the United States; in the place of the Hon. John Breckenridge, who resigned, to become the attorney general, and a cabinet counsellor of the United States.

Under the title of “An act to amend the act incorporating the Ohio Canal company,” a new act was made, of fourteen pages, and twenty-nine sections: shewing, at least, that the legislature disregarded both labour, and expense, of writing, and printing, in their department; upon so grand and transcendent a subject. While the effect of the second act, like that of the first, has been to occupy more space in the book, than extent in the canal.

The next act to be noticed, was one "authorizing John Pope to erect a bridge across the Kentucky river;" a splendid speculation also, the first demonstration of which, was afloat, prone upon the surface of the water.

"The Frankfort Water company," was incorporated by an act of this session. The object was to introduce water into Frankfort, from a spring two miles distant, by means of wooden pipes, laid under the surface of the earth; and to deliver it from hydrants, near the citizens' doors. The scheme was executed, and the water brought into use, for a short time. That it was not more durable, may be ascribed to the perishable quality of the materials, in part; but more to the defective execution of the workmanship.

"An act allowing fees to justices of the peace," is to be found in the volume for this year. An act of the kind had passed at the session of 1802; containing nine specifications of services for which fees were chargeable: these are repeated, and the list extended to fourteen charges. It is not thought necessary to insert them. They are similar to those exhibited from the acts under the first constitution.

Two other acts, authorizing bridges to be erected across the Kentucky river at Frankfort, were passed—one in favour of Thomas Tunstall—the other, of John Brown: the bridges, however, have not yet been commenced.

"An act providing a summary mode of recovering debts," was one of some utility. It gave a simple form of declaration in which the note or bond evidencing the debt, was to be substantially set out; with an averment that the debt remained unpaid: if the note, &c. had been assigned, that was also to be stated; and judgment prayed. This was to be lodged with the clerk of the proper court; who issued a summons, to which he annexed a copy of the complaint, for the defendant; which were to be delivered ten days before court, and in that case, judgment was to be rendered on the third day of the succeeding term; unless it should be suspended, by good cause shewn to the court, and an order obtained for that purpose.

The constitutionality of this act was questioned, as to debts *contracted before its passage*: but it was decided by the appellate

court, that it was no violation of the constitution, to hasten by law, the mode of recovering a debt, after it was due; inasmuch as it in no manner "impaired the obligation of the contract;" *the point which the constitution guarded, and intended only to guard:* for if it even made the obligation stronger, that was not prohibited; nor any impingement on the constitution.

At this session, sixty-one acts were passed—such as have been repeatedly characterized, and about which more need not be said, with that view.

The session of 1804, having stuck an entering wedge into the corporation of "the Lexington Insurance company," a bill passed at the session of 1805, for a *repeal* of all its banking powers: but being arrested by the negative of the governor, it did not reach the statute book.

The second constitution had lasted five years and a few months, when a formal proposition was made for a law, to put it to the people to have a convention, in order to amend, or abolish it; on which the yeas and nays being taken, there was a majority against its passage.

It was also proposed, to incorporate a bank in which the state should hold stock. This did not then take; but was renewed with success, the next year, as will be shewn. The Insurance company, as a bank, had divided eight per cent profit for six months—a fact which drew upon it, the horrific denunciation of being a "monied aristocracy," and therefore to be put down. While it may be remarked, and worthy of remark it is, that no public institution, or private individual, against which, or whom, that denunciation, coming from the soul and body of the democracy, has been directed, without communicating just cause of apprehension. What, let it be asked, came of the Insurance company? Its charter was mutilated and impaired—its existence was indignantly menaced, and rivalled, if not superseded, by the "Bank of Kentucky." But the *Bank of Kentucky*, incurring a like anathema, having also declared a handsome dividend, has in time experienced a like fate—being rivalled by forty "independent banks;" the pure and genuine offspring of democracy. These, however, stripped of cash, and bloated with bankruptcy, became offensive to

their progenitors, because, probably, they did not furnish them with enough money; and were, in their turn, crippled, or annihilated by *law*, to make way for the paper bubble, called "The Bank of the Commonwealth of Kentucky;" THE PEOPLE'S BANK; God save it. Capital stock, *three millions of dollars*; to be printed on slips of paper, representing PUBLIC FAITH, for its redemption. The rest of the narrative is withheld; because it is too well known, to require telling—too deeply felt, to need a *new* impression! But how could banks withstand the cry of "aristocracy," when the constitution itself could not? This question, anticipated at present, will be left for others to answer, until another time.

An occurrence of the winter 1805-6, simple as it was, and unimportant as it then seemed, will be mentioned, on the same principle, that the visit of Colonel Burr, in the summer preceding, has been noticed—it was the arrival in Frankfort, of John Wood, and Joseph M. Street; because it concatenates itself with events, which as much as any others, excited and agitated popular feeling, and especially those of some official characters, of high importance. Then it may be said, there was seen from the front door of Col. Taylor's inn, an elderly looking man, of middle size, and ordinary dress, with a Godfrey's quadrant stringed to his shoulder, a knapsack on his back, and a good looking youth by his side; both on foot, trudging through the muddy street, (then unpaved,) and, as if travellers who wanted rest. The old man was not Mentor, nor was the youth Telemachus:—Who are they? who can they be? were inquired. The question could not be answered.—They arrive at the door, enter, and are seated. The elder, announces himself to be "John Wood," and his companion, "Mr. Street," who had travelled with him from Richmond, in Virginia, on a voyage of adventure, for employment and support. When straightway, the wonder vanished, and they were like other men. While what will be further said, is, that when they are again wanted in this history, they will be withdrawn from the crowd—or rather it may be said, they will have withdrawn themselves.

The expenditure of the year, was fifty-four thousand and sixty-seven dollars, seventy-three cents, and two mills. The amount of receipts at the treasury, has not been seen; but they may be set down in amount, as equivalent, or nearly so, to the disbursements.

The treaty with Tripoli, the only power at war with the United States, when Mr. Jefferson came to the government, placed them in a state of universal peace: although not free from altercation. The Spanish possession of the Floridas, and the want of bounds to Louisiana, were subjects of some altercation; while the relaxed course, and bad faith, as it was thought, of the executive administration, were occasionally topics of remark, and sometimes, of censure, or ridicule.

[1806.] The year 1806, came on, to witness, or unfold, a train of events, the causes of which had been previously arranged, or casually deposited, in former years. Such as appeared materially to affect Kentucky, will next engage attention.

War with Spain, or Spanish authority in Mexico, bordering on the United States' territory, seemed to be apprehended by many—the Floridas were also in commotion—the movements of Colonel Burr were suspected—the whole of which may be considered as concurring causes of some uneasiness, hardly amounting to agitation of the public mind, in this country. Early in the vernal season, the name of General Wilkinson, who had left Orleans about 1804, and was then at St. Louis, began to be connected with that of Colonel Burr, and others, embarked in enterprises of a high, ambitious, military and political character; menacing both the territories of the United States, and those of Spain, with war and revolution. While the succession of the seasons, still unrolled the scroll on which this mystery was inscribed.

Well disposed citizens became anxious, to hear the voice of their own national government, pronounced on the subject—but in vain they listened. Nonentity itself, could not have been more completely silent. Leaving thus, each man, to conjecture and divine, according to his information, and saga-

city, which are known to be very scarce with the great mass of the community—to make up his mind, and shape his speech, and his conduct, as it might seem best in his own eyes. A perilous condition, in the midst of intrigues, which threaten the public peace; or that may eventuate, in treason.

In the mean time, John Wood, and J. M. Street, who have been named; the first, a professed man of letters; the other, familiar with newspapers, and of “sterling mettle;” and good capacity, as he afterwards approved himself—formed the project of publishing a weekly newspaper in Frankfort, to be styled, “THE WESTERN WORLD.” Professing *republicanism*, they were encouraged; and by the 1st of July, had their project ready for execution, by contract with William Hunter, proprietor, of the “Palladium” establishment, and editor of a paper, so called.

Wood, had been in New York, was personally acquainted with Burr, knew of Miranda’s enterprise, and possessed indications of that which was then, generating in the western states. With these scintillations of knowledge, he had combined information, no less imperfect, which he had acquired in Kentucky, relative to the intrigue of Wilkinson, Brown, Innis, &c. with the agents of Spain; and working these into a narrative, published it about the 4th of July, to the very great astonishment of the innocent part of its readers; and the no less consternation, of some of the guilty—then in, or about Frankfort: they being so named, or described therein, as to be known. They deny the imputation of *intriguers*, Spanish *conspirators* &c.; their friends, assert their innocence—their connexions, menace the editors—and means how, to destroy the establishment, and prevent the publication of the paper, are ruminated, with the most profound solicitude. The people are observed to take a deep interest, in the subject; and to expect the promised disclosure, with more than ordinary curiosity, and anxiety. “The Western World,” became the general topic, and of course was read with avidity.

Another number appeared, in the character of the first; and existing impressions were deepened: society was agitated;



and while Wood kept his closet, or evaded assault, by his pusillanimity, Street met not only those who desired to know the truth, but those also whose object it was to suppress it, with a firm and manly countenance. He was assaulted, and repelled the assailants—his life was in jeopardy, since it was perceived that nothing but his death could prevent an exposure of the guilty. Two of those most criminal, then high in office, were Sebastian and Innis. An assassination was attempted, by George Adams, armed with two pistols; and repelled by Street, with a dirk; after receiving a wound, on the breast, by the discharge of one of these firearms. The flight of Adams, and consequent pursuit, were arrested, by the interference of some of the citizens, who had become witnesses of the scene. The parties were taken into custody, and bail required of them, for appearance, &c. Mr. Adams, found no difficulty in giving bail; with Mr. Street, the case was very different: every where repulsed by friends, lately professed; he looked to the jail, as his next tenement; when meeting with Humphrey Marshall, hitherto a distant spectator, and but a slight acquaintance, he found bail: in which it is believed Colonel J. H. Daveiss, then happening to be in Frankfort, joined. Marshall, thereby reviving, and Daveiss, incurring, the malignant resentment of the implicated judges, &c. In due time, the late combatants, were tried; Street acquitted, and Adams found guilty, as it was supposed, of a penitentiary crime—But behold! the attorney general, who prosecuted for the commonwealth, and who alleged the *shooting* in the indictment, had, *very innocently no doubt, and void of the least design*, being one of the opposers of "The Western World," omitted to allege that "the shooting was with intent to kill." And so, *the jury, had not found Mr. Adams, guilty of any crime*; when judgment, was arrested; and the late accused, discharged, without further prosecution. Such are believed to have been the facts. Should any curious reader inquire, or one who may be dissatisfied reflect, why this was so, it is thought he may find a solution in the narrative itself—if not, certainly in the grade of morals belonging to the public functionaries of the time, and in the divided state of public opinion, ever befriending crimes.

"The Western World" continued, however, to revolve upon its axis, and to acquire friends, as it spread conviction.

A writer, whose numbers were signed "AN OBSERVER," who appeared to be possessed of many facts in relation to the *Spanish intrigue of earlier times*, as if yielding his confidence to the fortitude of Street, entered into the controversy; gave consistency to the narrative; elicited evidence, even from the implicated, which completely established the main facts, as to the Kentuckians, concerned; while he conciliated to the paper an immense support from public opinion; however, prudish, and coy, where those in power, and popularity, are attacked and exposed. But, what matters public opinion, in such cases, unless it can be brought to act in some efficient, organized form? Such progress had been made, in the development of the Kentucky intrigue, that it became an object to get it before the approaching session of the legislature. To effect this, an address to that body, was drawn up by "An Observer," stating in pretty clear terms, that Benjamin Sebastian, one of the judges of the court of appeals, *was a pensioner of Spain*; and praying an inquiry. This was printed confidentially; having yet to encounter the opposition of Henry Clay, John Allin, and others, who found their interest supported by it, as attorneys, and politicians, of the time. The efforts of these gentlemen, were directed, and exerted, to prevent the intended legislative inquiry.

When the address to the people was printed, some of the copies were taken to Versailles, and offered for subscription; where they were discountenanced by a few, but approved and signed, by the independent farmers; taken into possession by William Blackburn, a member from the county; and by him, as it is believed, made known to other members. The court, and its adherents, at that time a most formidable phalanx, were not to be assailed, even in one of its members, without much risk, in case of failure. What, however, had been expected, took place: measures being taken to bring the subject before the legislature, where it might be fully and effectually investigated; several persons of respectability, who had with-

held the evidence which they possessed, of the material facts, or whispered them only in confidence, hence became more communicative; and it was soon ascertained that the receipt of a pension by Judge Sebastian, could be proved, by persons in no manner implicated in the transaction.

By the 22d of the month, Mr. McKee, of Garrard, felt himself authorized to offer a resolution to the house of representatives, in the terms following, to wit:

*"Resolved, That a committee be appointed to inquire into the conduct of Benjamin Sebastian, one of the judges of the court of appeals, for this commonwealth, and to report their opinion to this house, whether the conduct of the said Sebastian, when acting in his office aforesaid, has been such, as to require the interposition of the constitutional power of this house."*

After a little discussion, which made known the subject of proposed inquiry, Mr. John Pope offered, as a substitute, which was accepted, the following preamble and resolution:

*"Whereas this house has been informed, and given to understand, that Benjamin Sebastian, one of the judges of the court of appeals, of this commonwealth, has been, during his continuance in office, a pensioner of the Spanish government: Wherefore, Resolved, that a committee be appointed, to inquire into the fact, and such other facts relating thereto as may be deemed proper for investigation."*

Mr. Simpson desired to know, if the house would sanction this proceeding upon hearsay, or mere surmise: an affidavit stating the charge, was at least necessary, to justify the adoption of the resolution.

Mr. Pope, said, he believed it had not been usual to require an affidavit, on similar occasions. That without a conviction in his own mind, of the truth of the allegation, against the judge, he would not have offered it for investigation; but from the information given him by a gentleman of great respectability in Lexington, he had no doubt of the fact; and deemed the inquiry proper. That members, on reflection, will feel themselves authorized, on probable grounds, to vote for the resolution—it only proposed, an inquiry.

Mr. Blackburn, from Versailles, or the county of Woodford, remarked, that he held two addresses and petitions; one in print, the other in manuscript, subscribed by a number of his constituents, alleging the same fact against the judge—the receipt of a pension from the Spanish government; which they prayed might be inquired into; and which he should produce as his warrant for voting in favour of appointing a committee.

The case thus presented, became exceedingly disagreeable, and even embarrassing, to some of the members, whose object was to evade the inquiry; but who did not possess assurance sufficient to oppose it by direct means. The question was put to the vote, and carried in favour of the resolution; whereupon a committee was appointed, and vested with the usual powers.

After the committee met, and determined to send for witnesses, Sebastian and his friends, considering his detection unavoidable, if the investigation could not be arrested; attempted first to obtain a postponement, under pretence of giving the judge time to prepare for his defence: that failing, and knowing his guilt, in the next place, in order to screen others, who would unavoidably be exposed, and who had also stood out, the “patriots of their day,” the judge resigned his seat in the court of appeals; of which information was sent by the governor, to the committee; who refused to take any notice of it, and proceeded.

Witnesses were sent for, and attended: among them Judge Innis, the coadjutor of Sebastian in the Spanish intrigue. He being sworn, proceeded, under strong symptoms of perturbation, and reluctance, to disclose some account of the mission of Mr. Sebastian in 1795, to treat for the navigation of the Mississippi already mentioned; connecting it with the Democratic society, and French intrigue, as if to enlarge his circle of worthies; but being much embarrassed, he obtained permission to withdraw; as it appeared he had no more to say. Either in the latter part of the same day, or in the course of the next; having in the mean time consulted several friends, as to the propriety of disclosing the overture of 1797, to dismember the

union, also previously mentioned, and being advised to do so, as it was rendered nearly impossible that it should be much longer concealed—the judge reappeared before the committee, in an agony of distress; and suggested that he had something more to communicate. Due attention being rendered, he was desired to proceed. He began, but found himself so affected by his reflections and feelings, that his respiration became oppressed, and his voice nearly exhausted, when he was allowed to retire and reduce his deposition to writing; this being done, disclosed the transactions with Mr. Power: which having been placed under their proper date, needs no further remark.

Other witnesses were examined, the object of inquiry ascertained; and the committee prepared to report: which was done; concluding in the terms following, to wit:

*“Whereupon, your committee does not hesitate to declare as their opinion, that the information given to the house of representatives is substantially true, and correctly detailed; and that the said Judge Sebastian, is guilty of having for several years, received from the Spanish government a pension, paid in cash annually, to the amount of two thousand dollars.”*

*“Your committee further report, as their opinion, that while Judge Sebastian was in the exercise of his office in this state, and drawing his annual salary therefrom, he was employed in carrying on with the agents of the Spanish government, an illicit, unjustifiable, and highly criminal intercourse, subversive of every duty he owed to the constituted authorities of our country, and highly derogatory to the character of Kentucky.”*

And the same being read in the house, was agreed to, without a dissenting voice present—there being ten absentees. And so the investigation dropped—it appearing that the judge who formed the subject of inquiry had resigned. He, indeed, was execrated, by the sound and honest part of the community, for the guilt and real turpitude of his conduct: by another part, more conspicuous, for reasons best known to themselves. He had acted inadvertently—he had exposed himself to clear

and open detection—and in that, he had also exposed, or caused to be exposed, other *precious republicans!* who were accustomed to give tone to public opinion, and who might as a consequence, lose their influence among the people; he was therefore, cut off from the body, which was nevertheless to be preserved.

The effect of the explosion, was indeed great, for the time; but no effort that could be made, was omitted, to reduce it, or to put down those who had been the moving cause of the examination, which had thus stripped of its fraud and treachery, a *faction*, which had existed in the bosom of the state, from the year 1788; and whose objects have already been exposed.

Judge Innis, the coadjutor of Sebastian, remained unmolested; and even uncensured, by any expression of opinion, on the part of any public functionary.

The representation in congress from Kentucky, remained as dumb as stocks or blocks, after a full disclosure, that the judge of the United States' court had been engaged in this clandestine intercourse, pronounced by the house of representatives, in the case of Sebastian, "illicit, unjustifiable, and highly criminal, subversive of every duty he owed to the constituted authorities of our country, and highly derogatory to the character of Kentucky;" and which every man of common sense must have seen applied with augmented force, to the sole judge of the federal court. Who, if he was not also a pensioner of Spain, was not the less guilty, nor the less devoted to the conspiracy against the government, for being an active and zealous volunteer. But it is probable, the impunity with which he was treated, found its cause in the party motive which suggested his apology, for not disclosing the overture of 1797, for severing the union; *the concealment had been practised in the administration of President Adams—to whom Mr. Jefferson had succeeded, and in whose heart there was a perfect amnesty, for all such crimes, if not for treason itself, when perpetrated by a devoted admirer of himself, and a party coadjutor; and such the delinquent judge was estimated, at, and before that time.* But to close this narrative, which reflect

the picture of degradation, already drawn for Kentucky, by the committee, and confirmed by the house of representatives, in relation to Sebastian, upon the United States' court as then filled; it will be further observed, that to free Kentucky from the reproach of quiet submission to a *self-convicted, illicit intriguer with a foreign power, for partial treaties, and dismemberment of the union, in effect—while he was the only judge of the United States' court*; holding in chains, the criminal justice of the government; and in order to have this judge, thought to be totally unworthy of his place, and a disgrace to the state, tried, and turned out of office; the person who instituted the process, which eventuated in the detection, and resignation of Sebastian, determined, if practical, to rouse the palsied and sleeping faculties of his fellow citizens: and with the view to give effect to the new life and vigour which he hoped to inspire, determined to present himself as a candidate in Franklin county, for the next legislature, to be further noticed.

## CHAP. IX.

*Burr's Enterprise unfolded—Proceedings in Kentucky, in Ohio, and elsewhere—Part taken by the United States' Attorney, and by the President of the United States—Wilkinson, and others, implicated—Proceedings in the Court, and in the Legislature, &c. &c.*

[1806.] RETURNING upon the current of time to the occurrences of 1806, there will be found with the transitory records of the year, a variety of narratives, highly meriting the attention of the reader of Kentucky history. In the course of the summer, Colonel Burr again made his appearance on the Ohio river, and its adjacent territories. Whence proceeded rumours of grand enterprises, intrigues, conspiracies, revolution, and eventual war: sometimes threatening the Spanish dominions; sometimes those of the states, and of the United States; and occasionally, even both, with rupture and dismemberment. Early in October, it was known that extraordinary measures had been assumed, and that actual preparations were making for some mysterious operation of a military character, in the vicinity of the colonel's ostensible residence. For he, in the mean time, not less susceptible to the impressions of beauty than ambitious of military renown, finds on an island in the Ohio, Mrs. Blannerhassett; whose charms of person and of mind, produce effects on the colonel, no less powerful than those fabled of Calypso on the wandering son of Ulysses; and though detained "in love's soft fetters bound," yet were his agents active; and none more so, than this fair lady's husband, in the state of Ohio: while others in this state were also busy in the same month, forwarding other means to the same end. Whispers now are heard to circulate the scheme; when rumour gives it the form of a project, to ensure the possession of millions of dollars to those concerned, and to put a diadem on the head of Colonel Burr. Thus reports, running like king's messengers, came,



"But these reflections open a scene which must awaken the feelings, and excite the interest, of every friend to his country, who duly appreciates the importance of union.

"We have already seen an attempt made to expose a set of men among us, who some years since were engaged in a scheme of disunion; I mean the Spanish associates. And we have seen the desperate efforts which have been made to suppress the inquiry—to destroy the reputation and credit of those who were making, and those who were supposed to be making, the necessary development. We have seen certain newspapers devoted to the service of the conspirators, and writers prostituted to misrepresent the truth, and to impose falsehood on the public mind. By these means, under the official influence of some of the implicated characters, the public opinion is divided—and the attention of the people diverted from the real object of inquiry, to other matters of little importance to the question. Thus truth and falsehood come to be confounded; the distinctions which should characterize virtue and vice are lost, and the traitor to his country holds the place of the honest citizen. In this way is the public mind to be corrupted; in this way are the people to be prepared for conspiracy, insurrection and disunion. When it shall be clearly manifested that the public mind will bear the traitor in high office; that it will frown on those who shall dare to oppose him; and when the sympathies of the people can be enlisted on the side of the guilty—then shall we be ripe for revolution—then shall we see spring up among us, such men as the Roman Marius, Sylla, Cataline, and Cæsar. For it will then be evident that the public virtue, necessary to sustain a republican government, exists no more. And nothing but foreign war could keep the parts of the union together; nor would the dissoluted parts long retain, if they should assume the republican form. Such is the lesson taught us by the history of other nations.

"The people, if divided on the subject of union, will be made to conquer themselves, by playing the one part against the other. To divide the people has therefore been a primary ob-

ject with the conspirators, past and present. Since "divide and conquer," is a maxim as old as ambition itself.—This is the doctrine which the enemies of the American union perfectly understand—it is a principle of which they never lose sight. Divide the people of any country, and a small military force settles the question of government.—Thus has France conquered, as well the republics, as the monarchies of Europe. And thus may any people be conquered who permit their loyalty and love of country to be corrupted. Thus may the American union be dissolved, when once the people shall cherish and support those who are publicly convicted of holding principles and advocating measures of disunion.

"The Spanish association was but the germ of the present conspiracy against the union, as Marius, Sylla, and Cataline, produced in Cæsar, the conqueror of his country.

"In 1788 the Kentucky Spanish association was reduced to a plan which had its definite objects; its views were unfolded by the associates, and happily defeated, at that time, by a manifestation of the public will. But the people were never awakened to a full sense of their danger, and having escaped the mischief, they quietly set themselves down, and seem to have retained no suspicion, but with little or no effort, yielded themselves up to the rule of those who would have betrayed them. While the conspirators, possessing much of the wealth of the country, a great share of personal influence, but above all, most of the official power of the old district of Kentucky, by combining, by keeping each other's secrets, by concealing each other's crimes, and by mutually supporting each other's claims to office and emolument, have contrived to occupy most of the important public offices, under the change of government. Nor has there been any man who dared to oppose them, without feeling the effect of their power and their malice, either in his property, his reputation, or his just claims to public promotion. I do not mean to be particular, but I would awaken the public recollection, to which I fear not to appeal upon these observations. To which I will add another: These Spanish associates have been uniformly disaffected to the go-

vernment of the union, and under various pretexts have contrived to disaffect a great portion of the people, and sometimes, at some places, almost to the extreme of insurrection. Under the present administration of the federal government, they have been quiet in their places, and no doubt gratified at seeing the government losing its energy and respectability—its sinews relaxed—its nerves untuned—its whole system debilitated—its visage marked with old age—and its gait tending rapidly to dissolution—the point at which they aimed; and from which it can only be recovered by a sense of the disease, on the part of the people, with whom it rests to apply the proper remedy. A foreign war, however to be deprecated, which should press particularly on the western parts of the union, is perhaps an exception to the universality of the preceding observations, and would have a tendency to excite sympathy, and cement the union.

“This state of things, so afflicting and alarming to the real friend of his country, has given rise to a new conspiracy, for effecting disunion. The outline of which we see traced in the publication from Ohio. The means to produce the end will be various, yet reducible to two primary agents, persuasion, and force. With these, the people are to be assailed, and unless they are prepared for resistance, unless the weapons of the conspirators can be turned with effect against themselves, their purposes will be accomplished.

“Solemnly impressed by a view of the scene before me, greatly devoted to the union of America, and confidently believing that the great body of the people are possessed of public virtue, and attached to the constitution;—I have felt it a duty which I owe to my country, to sound the alarm—to awaken the people to a sense of their danger—to attempt to rally them round the standard of the union; and to call forth an expression of their will, upon a subject so momentous to their future peace and happiness.

“In this attempt I shall not be charged with personal motives, for they are lost in the magnitude of the subject. Besides, it is upon the occasion, and the feeling which it excites, that I

rely for attention. It is the facts and the sentiments, and not the signature, that should influence public opinion. Was there another to perform this task, I would forego it with cheerfulness.

"Indeed, I know that the man who addresses you, with the hope of raising you from your present fatal security, and of convincing your judgments that the Union is in danger, should be little less than a messenger from heaven: such is your confidence in your present rulers:—nor do I wish to diminish that confidence. But I well know that an awakened apprehension of danger, on the part of the people, naturally begets vigilance on the part of governors who prize their safety. I know that a man who addresses a great and magnanimous people, with the hope of commanding their attention, ought to be charged with a gospel, or revelation: Such is the importance of the subject that I now offer to your consideration; and such the people whom I address. Great and magnanimous, they may continue to be. It is but to assume their natural and just character in the American union; it is but to manifest a manly determination to oppose, and to punish, upon all proper occasions, the *intriguer* and *conspirator* in favour of disunion. It is but to take a firm and dignified stand among the western states, *in support of the federal government*. In this point of view, the local situation of Kentucky is all-commanding. Were it necessary to resort to argument to enforce a conviction of these *truths*, and I had a mind powerful as the storm, and penetrating as the lightning, I would devote its energies to the attainment of so grateful and brilliant an acquisition; but I take them to be self-evident.

"Had I the tongues of saints and of angels, I would exert their utmost eloquence to impress on your minds *the importance of Union*.—*Union!* an idea inspired by Heaven itself, when in the councils of its benevolence, it determined to make this, with the Atlantic portion of America, *free and independent*. An idea confirmed by the omnipotent God of battles, when he gave to our infant struggles the palm of success, and the laurel of victory. An idea which should be endeared to the heart of every citizen of the United States, by the recollection of an

arduous war, a glorious peace, and an ample territory. An idea which should excite in the mind of every such citizen, a degree of enthusiasm, when he surveys within the comprehension of his country, a variety of genial climates—a diversity of fruitful soils—and a multiplicity of convenient and spacious harbours. The sources of health, wealth, and prosperity. Union!—Rapturous thought! It associates whatever is most desirable to man, and most amiable in life. In union! there are peace, safety, and happiness—there are laws, justice, and humanity—there are morality, religion, and piety—there are the sympathies of the heart, the charities of the soul, the elegancies, comforts, and decorations of life. There are riches, honour, and glory—domestic tranquillity, internal security, civil liberty, and national independence.

“In disunion! what a melancholy and distressing contrast; separate confederacies or state sovereignties; the perpetual rivals, and inveterate enemies of each other. Hence ruthless jealousy, hot contention, and bloody war—heavy expenses, dissolute morals, private misery, and public distress. These observations, or predictions, need no reasoning to enforce their truth. For if we cannot live in union—we cannot live in peace. The rest follows in the train of war. Let us then penetrate ourselves with the conviction, that union is all-important and essential. Let us teach it as a moral precept to our children, and practice on it as a religious tenet ourselves. Let us guard it as a sacred deposit intrusted to our care by the hand of heaven, and protect it from abuse as we would the altar of our holy religion. Let us believe that it is to our temporal happiness, what a faith in Jesus Christ is to our future felicity.

“These are the tidings which I announce—and the seals of reason and experience, attest their truth.

“AN OBSERVER.

“Oct. 15th, 1806.”

The foregoing needs no commentary—its effect has been acknowledged in the course of judicial investigation, and was otherwise known to have animated the country, at least with vigilance.

Soon after this publication, Colonel Burr was known to be in Lexington. The court of the United States held in Frankfort by Judge Innis, commenced on Monday, the 3d of November: On the 5th of the month, Joseph H. Daveiss, attorney for the United States, came into the bar of the court, and addressing the judge, said—

“That he had a motion to make, of great magnitude and importance, touching a transaction of a very extraordinary nature, as it related to the district, and to the whole union. That the unhappy state of his health, had prevented his making it until then; for which he felt himself barely able; but being determined to lose no time, he had prepared an affidavit, on which his application would be grounded”—and which was read as follows, to wit:

“J. H. Daveiss, attorney for the said United States, in and for said district, upon his corporal oath, doth depose and say, That the deponent is informed, and doth verily believe, that a certain Aaron Burr, Esq. late vice president of the said United States, for several months past, hath been, and is now engaged in preparing, and setting on foot, and in providing and preparing the means, for a military expedition and enterprise within this district, for the purpose of descending the Ohio and Mississippi therewith, and making war upon the subjects of the king of Spain, who are in a state of peace with the people of these United States—to wit: on the provinces of Mexico, on the westwardly side of Louisiana, which appertain and belong to the king of Spain, an European prince with whom these United States are at peace.

“And said deponent further saith, that he is informed, and fully believes that the above charge, can be, and will be fully substantiated by evidence, provided this honourable court will grant compulsory process to bring in witnesses to testify thereto.

“And the deponent further saith, that he is informed, and verily believes, that the agents and emissaries of the said Burr, have purchased up, and are continuing to purchase, large stores of provisions, as if for an army; while the said Burr, seems to conceal in great mystery from the people at large,

his purposes and projects, and while the minds of the good people of this district, seem agitated with the current rumour that a military expedition against some neighbouring power, is preparing by said Burr.

"Wherefore, said attorney, on behalf of the said U. States pray, that due process issue to compel the personal appearance of the said Aaron Burr, in this court; and also of such witnesses as may be necessary on behalf of the said United States; and that this honourable court, will duly recognise the said Aaron Burr, to answer such charges as may be preferred against him in the premises; and in the mean time, that he desist and refrain from all further preparation and proceeding in the same armament within the said United States, or the territories or dependencies thereof.

"J. H. DAVEISS, A. U. S."

Having read this affidavit, the attorney proceeded in the following words:—

"The present subject has much engaged my mind. The case made out is only as to the expedition against Mexico; but *I have information on which I can rely, that all the western territories are the next object of the scheme—and finally, all the region of the Ohio is calculated as falling into the vortex of the new proposed revolution.*"

The following section from the act of congress entitled "An act in addition to the act for the punishment of certain crimes against the United States," was read, as designating the crime intended to be prosecuted, viz:

"Sec. 5. That if any person shall within the territory or jurisdiction of the United States begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offending shall upon conviction be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years."

After hearing the motion, the judge took time until the Saturday following, to make up and deliver his opinion; which overruled the motion, and denied the process. In the mean time Colonel Burr, being in Lexington, is said to have received notice of the motion in less than four hours after it was made; and then apprised the judge by letter that he would be in court within a day or two, to confront his accuser, and to meet his inquiry. Arriving on Friday, after the court had adjourned, nothing was noticed on the subject. Saturday morning, the colonel made his appearance in court: causing much sensation; in the language of the "Palladium"—a paper doubtless, much against the will of its editor, strongly affected towards "conspirators"—adding, "that to his enemies, it was evident chagrin; to the impartial, that is, nine-tenths in the house, it gave the utmost satisfaction."

That chagria was depicted on the one side, and great complaisancy on the other, is not to be denied. There were two distinct kinds of people in the house: the chagria belonged to one; the complaisancy to the other. The first might well proceed from the combined impression of the conduct of the judge, and of the culprit: the second, if it extended to nine-tenths of those present, did not proceed from their impartiality; although it might from ignorance and prejudice in many of them. Nor is it strange, when a writer was hired to misinform, and a newspaper at their service.

The colonel himself, finding the attorney's motion overruled, addressed the judge with much confidence;—spoke of the recent procedure of the United States' attorney, as being very extraordinary;—insinuated that sometime since he had made it known that he was to leave the state, and that the attorney had reason to suppose him gone, on his private though urgent business, as he should have been but for an unexpected occurrence;—that fortunately he had heard of the motion and allegation against himself, and although it appeared that the judge had treated it as it deserved, yet, as something similar might be attempted in his absence, still necessary, he had deemed it proper to meet the gentleman at the threshold and demand an



investigation of his conduct, for which he was always ready, and therefore had attended. The attorney replied, that as Colonel Burr gave his voluntary attendance, he wanted nothing but the presence of the witnesses, to be ready. After consulting a short time with the marshal, the attorney said he could be ready by Wednesday next, should the witnesses attend; which he thought they might, by that time: that if Col. Burr could attend on that day, he might expect the investigation he desired. The colonel agreed to wait, and Wednesday was set for the trial. The subpoenas required by the attorney, were ordered; and so also was a grand jury. Officers were despatched to different places, as Louisville, Jeffersonville, Lexington, Danville, &c.

The grand jury was empannelled of persons in court, sworn, and adjourned, to meet on Wednesday. The attorney, having conversed with the persons to be summoned, doubted not that the misdemeanor charged in his affidavit would be proved, felt gratified at the prospect. The colonel, it is probable, knew those witnesses much better. Be that as it may, fame had now full hold of the subject; and seldom has she been more profuse in the use of her many tongues, or impelled her messengers, on more rapid wings. On the day of expected trial Frankfort was crowded, and the court house gorged with citizens and strangers.

The court being opened, all were filled with curiosity and expectation. The attorney had counted his witnesses, and ascertained that one of the most important did not attend. He had to announce the unpleasant fact, and to this purpose addressed the court. He said, the absence of Davis Floyd, an important witness, rendered it improper for him to proceed at that time. He was therefore compelled to ask for a postponement of the prosecution.

It appeared upon inquiry of the officer who had been at his house, that he was attending a session of the Indiana legislature, of which he was a member; consequently there was no reason to expect his attendance. On hearing this, the judge at once discharged the jury. And a second disappointment,

greater than the first, took place. Immediately succeeding the discharge of the jury, Colonel Burr, attended by Mr. H. Clay and Mr. J. Allin, as his attorneys, came into court; and being informed that the grand jury was dismissed on account of Mr. Floyd's absence, the colonel rose, and very gravely expressed his regret that the jury had been discharged, and asked for the reason. To which the attorney for the United States replied, that it was on account of the absence of Mr. Davis Floyd: adding, that he considered it inexpedient to begin an investigation, which could only be partial without Mr. Floyd—that the attending witnesses could prove a number of detached facts, but the testimony of Floyd was necessary to connect them, and give the design of the whole. Colonel Burr, rising again, expressed his desire, that the cause of the postponement should be entered on record; and also the reason of the non-attendance of Mr. Floyd. To which the attorney assented. The colonel, once more at large, addressed himself in form to the judge, but in effect to the people; and said, that the good citizens of Kentucky might, and he hoped they would, dismiss their fears for the present; that in fact, there was no ground for them, whatever efforts had been made to excite them: that he had understood, some had been made to apprehend that he was pursuing schemes inimical to their peace—but they were misinformed, as they would find, if Mr. Attorney should ever get ready, and open his investigation: that in the mean time he could assure them they would be in no manner of danger, from him; that he had to act on the defensive only; that he should expect another attack, and should hold himself ready for it.

During these proceedings, the deportment of Colonel Burr was grave, polite, and dignified.

Those who had attended from motives of curiosity, or a desire for information, were disappointed; and even those well disposed, might have felt some twinge of vexation. There were, however, as already suggested, two parties: the principals of which, knew, or suspected each other; the one, a small number, thought the others favoured Burr's schemes; while

they apprehend<sup>d</sup>, that the prosecution of Burr, might lead to disclosures against themselves, and their friends. For it is to be recollected, that the publications of the day implicated all conspirators, both old and new: and that at the very time the address already mentioned, for an inquiry into Judge Sebastian's pension, was in the hands of a member of the legislature. While culprits, no less than honest men, have a common feeling, the escape of one, can but keep alive the hopes of the rest; and induce a co-operation for the impunity of each.

In the case contemplated, the attorney for the United States on the one side, and Colonel Burr on the other, served to arrange and designate the parties. The colonel, had a large majority; the attorney found himself in a small minority. All the fragments of former conspiracies, both Spanish and French, as well as those immediately engaged with Burr, and all such as they could influence, took side with the colonel: many indeed, honestly believing him innocent, who would have spurned him had they thought him guilty. But that was, by means of disguise and misrepresentation, to be prevented. The object now, among the friends of Colonel Burr, was to elicit the sympathy of the public, by holding him up as an innocent man, persecuted by federalists, and their adherents; and by openly countenancing him; while they exerted themselves to put the attorney out of countenance, by personal slights, and by raising the cry against him, of persecuting the innocent, instead of *prosecuting* the guilty. Thus was the officer of the law, for attempting to relieve the country, from one who was machinating against the integrity, peace, and honour of the government, enough mortified, by the previous neglect of the president of the United States, yet to be set forth, and now increased by seeing the guilty intriguer likely to evade the exposure, and the punishment he merited, quite put to shame by reproach and obloquy.

He had, with the vigilance which belonged to his character, ascertained the conspiracy of Burr in its first opening bud, and, with the promptitude of a faithful public servant, communicated what he discovered from time to time to the president; he had,

at the risk of health and life, neglected his own business, on a visit to St. Louis, with the sole view of collecting intelligence for the executive; and for it all, had received the most pointed neglect, after an acknowledgment of his first communication, and a solicitation to persevere. He saw in Frankfort the governor of Kentucky, not merely neutral, but in his official capacity contributing to lull suspicion, and to smooth the way to the success of Burr's projects. For although the speech to the legislature at the opening of the session, treats of the "paction" with Virginia about lands, so far from turning public attention on the active but secret and clandestine intrigue, then assailing the morals of the people, together with their allegiance; he even drops in a suporific, lest, it would seem, they might be awakened to apprehensions, or to soothe those which had been excited: by suggesting that *all was in a state of safety, peace and tranquillity*. And this the day, on which the attorney of the United States, made his first motion for process against Colonel Burr. The case of Sebastian, was then also in preparation, but not a hint from the governor as to either.

It is not said, with any personal view to the editor, for it is believed that he was ignorant of the guilt of the parties, but the "Palladium," was an active, and not inefficient organ of concealment and misrepresentation for conspirators, contributing much to the general delusion. Nor is it to be expected, in a country and government like this, but that such vehicles ever will be found, for such purposes. Similar observations are to be made in relation to the hireling author previously alluded to; it is believed, that he was imposed on, or he would not have been employed; for it is very certain he was in no other manner concerned. To name him, though now no more, seems but justice to the living. The late William Littell, was the man: The evidence of his employment, is to be found in his own deposition. He was paid, for one production, by Innis, Brown, and Wallace, fifty dollars each; and cheated of the other fifty by Sebastian.

And now, it is deemed pertinent, to inquire into the facts and circumstances, of the correspondence which took place between

the attorney of the United States, and the president, in regard to the intrigue of this year; and also, to notice some collateral information given to the public, and hence accessible by Mr. Jefferson, the better to enable the reader to appreciate his *merit* in this, as well as in another branch of this case.

To descend to particulars—The attorney for the United States in the district of Kentucky, having in the latter part of the year 1805, obtained information that sundry citizens of Kentucky, were pensioners of the Spanish government—that a revolutionary scheme had been projected for the west; the preparations for which, were progressing with great secrecy, under the direction of Colonel Burr, and his coadjutors—that it embraced men of distinction in the atlantic states, and others of high standing in Kentucky: he however, seeing no immediate danger, suspending his communications to the president, for some time, in order to get further, and more perfect intelligence; did on the 10th of January 1806, write to him on the subject. And from that letter, is taken the following extract, in addition to the foregoing information, viz:

“The dangers which I fear, may be trivial or distant, but as on the other hand, they may be near, and momentous; and in such case your being early apprised of them highly important; it is a duty I owe you as the chief of my government to give you timely hints, whereby you may forestall the danger and bring the traitors to punishment in due season.”

Another—“A separation of the union in favour of Spain, is the object finally.”

Again—“This plot is laid wider than you imagine. Mention the subject to no man from the western country, however high in office he may be. Some of them are deeply tainted with this treason. I hate duplicity of expression, but on this subject I am not authorized to be explicit; nor is it necessary. You will despatch some fit person into the Orleans country to inquire, having letters with him from the suspected gentlemen, and he can fully and easily develop the whole business. Do not think this a slight advertisement.”

In a letter of the 15th of February, from the president, he acknowledges the receipt of the foregoing, and requests the

attorney to continue to furnish him with all the information he can collect, and particularly with the names of the persons concerned.

Well then, the president was informed of the embryo plot, before the 15th of February, 1806, by the attorney of the government, in Kentucky. He had also been warned by General Eaton in the winter 1805-6, sooner or later. But this is not all, nor half. For before the receipt of the president's letter, the attorney getting impatient, wrote him a second, on the 10th of the same February; and among other things observed: "You must have remarked Mr. Burr's journey out to this country last year. What was he after?" &c. "He went down the Ohio with Wilkinson. At Massac they were closeted five days. Burr was helping him arrange his new government—so it was given out. Then Burr went to New Orleans; then galloped across the country to Nashville; then up to Louisville; then through the wilderness to St. Louis, again to see Wilkinson; then to Lexington; and then to see the senator in Ohio," &c.—Accompanying this letter, was a schedule of those who were thought to be concerned; on that list, were the names of Burr, and Wilkinson.

On the 5th of March, no letter having yet arrived from the president, the attorney wrote his third communication: expressing anxiety to know if his former letters had come to hand, or not; and giving information that he would pursue his inquiries in a journey for that purpose, "being more and more confirmed in his opinions."

The 27th of March, the president's answer to the attorney's first letter, as mentioned, came to hand; and a fourth letter was immediately written to him. This and some others contain a variety of local details, unnecessary here. The journey was executed, Wilkinson seen, suspicions confirmed, and some information obtained, all of which was transmitted to the president in a letter of July; being much disappointed, and not a little mortified, on finding no letter from the president on his return home the 3d of June. The fifth, being that of July, gives a recital of occurrences at St. Louis, and says—

"My duty however, as a citizen, to you, is not fulfilled, until I tell you that I have it from an authority which I cannot disregard, that the present project is not the original one, but a new scheme engrafted on it. *Its outlines are, to cause a revolt of the Spanish provinces, and a severance of all the western states and territories from the union, to coalesce and form one government.*"

This information was in a letter which must have been received by the president in July, or the beginning of August. It also conveyed to him the names of those known or believed to be concerned: Colonel Burr at the head of the list. Thus early was the president informed of the intrigue: And it will be remarked, that its outline and ulterior object, is as well defined, as at any time it could have been, even after Burr's trial in Richmond; which brought forth, as it may be supposed, all the information possessed by the government. Why, it may be asked, did not President Jefferson issue his proclamation in August? For the same reason, no doubt, that he did not respond to the communications of the attorney: he had made his calculations. An attempt to analyze them, will be postponed to a more advanced period. In the interim, the correspondence will be pursued.

The attorney finding that he could get no further letter from the president, on the 14th of August addressed one to the secretary of state of the United States, which was marked, private. In this he gave various explanations and corroborations of his previous intelligence to the president: taking it for a certainty, that he had seen those communications.

On the 18th of September, the receipt of this is acknowledged, by one from the secretary, of five lines; in which are two ideas: one, "that it shall receive confidential attention;" the other, "that a letter from the president was enclosed." The enclosed was dated the 12th of the month. It acknowledged the receipt of five letters in due time; and assigns as a reason for not answering them, the absence of the author from home: without one word of response, or inquiry, as to the contents of the letters. Omitting, also, every species of instruction how to proceed in relation to the enterprise of Burr—by

the time the letter was received, rendered obvious, by the state of preparation.

Thus was the officer of the United States, whose duty it was to institute prosecutions for breaches of the laws, left in the dark, to grope his way, in a case threatening the peace, and even the rupture of the government. While he had leisure to set himself down, and make the following inferences:

1st. The president has been duly informed of this brooding conspiracy to disturb the peace, if not to affect the integrity of the United States. He has had the names of the ostensible projectors and promoters of it; he has taken no visible measure to check its progress; while it has become an object with public journalists—but I will not impute to him, a positive connivance.

2d. He has withheld from me both information and instruction—leaving me thus under every discouragement, to take my own measures, at the hazard of his displeasure and the loss of my office: so far, however, I feel conscious that I have discharged my duty to my country, be the consequence as it may.

3d. It does not appear that the president has, by the agency of any other, instituted any means to acquire information, if mine did not satisfy him; although it has been published and proclaimed that the expedition would commence on the Ohio, about the middle of November. Not even a proclamation, the usual mode of warning, has yet been made public: it is now late in October. Is it intended when Burr is gone to send a hue and cry after him? But I will not perplex myself by endless conjectures: the November session of the court is approaching, thought he, I will at least make an attempt to explode the treasonous project, by getting the ringleader arrested, at its very opening.

Such had been the reflections of the attorney, before his arrival at Frankfort the 1st of November. He was confirmed in his purpose, by finding that the governor had received no communication from the president, and was as to any purpose of impeding Burr's progress, perfectly listless. The attorney



had also ascertained, that in the neighbourhood of Louisville preparations for the expedition were in considerable forwardness. His essay in court and its result have been narrated.

The 16th of the month, he transmitted an account of his proceedings to Mr. Madison, secretary of state for the United States; and still kept on his post of duty; seeing that events were ripening the crisis which was soon to unfold itself to every body's view.

Having ascertained that Mr. Floyd had returned home, and that his attendance, as well as that of other persons whose evidence he wanted, could be procured, the attorney, under strong impressions of the guilt of Colonel Burr, and the approaching readiness of his project for execution, repeated, on the 25th of the month, his motion for a grand jury, and subpœnas; grounding it on his former affidavit.

The motion was granted; and the 2d of December fixed for the appearance in court. Accordingly the grand jury appeared, were empanelled, sworn, and charged. Without considering it very material to discriminate the days, it may suffice to state, that on calling the witnesses, it appeared that General John Adair was absent, as also Mr. Lockett. The attorney was again under the necessity, in his judgment, of asking for a postponement. Alleging that the absentees were important witnesses for the prosecution, and especially General Adair, without whose testimony, he could not safely go into the trial.

Colonel Burr, attended by his former counsel, was in court. Mr. Clay now rose on the part of his client, objected to the delay and suspense proposed—said, that Colonel Burr, who knew himself innocent, and for whose honour, and innocence, he could pledge his own, was alone apprehensive of delay. That he had expected to have left Kentucky ere this; that his business called him away, while delay was likely to be injurious to him. That it could but be painful to Colonel Burr, to have to dance attendance on the attorney's motions and mock prosecutions, from time to time, without knowing when

he would be ready, or that he ever would be ready. How, indeed, should he be ready for trial, when he had nothing to investigate. He should be compelled to proceed, or dismiss and abandon the prosecution.

The attorney for the United States, replied, that Colonel Burr had not yet been cited, that his attendance was voluntary; that the proceeding was solely on the part of the United States, and that the colonel, not yet a party, was rather an intruder; that until indictment found, there was no party to be arraigned, consequently no defendant to be heard; that he was in the discharge of a high and important duty to the United States; that he had the control of the subject in its present stage, and that he ought not to be interrupted by gentlemen, who anticipated their occupation. That when Colonel Burr was indicted, it would be time enough for him and his counsel to appear. That the process had been executed on the witnesses, they had not attended; that he was the person to judge of their materiality, and he thought them material; that there had not been time, nor a complete failure, on which to ground the process of attachment. That if the process of the court did not compel their attendance, it was not for him to do it; but that it was for him to determine whether he could go on or not. That indeed it rested in the sound discretion of the court, whether the grand jury should be kept together or not; and he had requested that they should be kept empannelled. He would like to know, also, if he was to be interrupted and catechised by gentlemen, styling themselves counsel for Colonel Burr.

The gentlemen replied successively. Mr. Allin remarked, that he was an attorney in the court; that he had a tongue, and the right to use it; that he cared not in what character he was viewed, whether as counsel, friend, or foe of Colonel Burr; he hoped he yet had the liberty of speech, and he did not know that he could use it in a better cause, than in reducing the pretensions of the United States' attorney, to their just limits. That he had yet to learn whence he derived the right of accusing a man to his face, and then denying that he was

in court: of taking what time he pleased to find an indictment against him, which may be dissipated with a breath, when he is allowed to speak, and yet denying him the right to speak, lest it should prevent its being found a true bill.

Why, sir, to some men, the finding of such a charge as the affidavit makes out, would be thought no trivial matter: to Colonel Burr, the affidavit itself may be thought a charge, and produce a desire to see it repelled. No charge, no party, no defendant! until an indictment found! He had not thought the gentleman willing to admit so much, until he heard it from himself. And even now, he thought him mistaken. Of one thing he was sure, and that was, that Colonel Burr was as much in court as if he had been brought there by process; and as much entitled to counsel. That it mattered not whether he was retained by Colonel Burr, or not; he had a right to volunteer for who he pleased, and the bench would not undertake to direct the bar, for whom they should, or when they should appear. If the gentleman, who would prosecute, if he could get witnesses to prove his allegations, has so much leisure on his hands, as to find all times convenient, it may not be the case with all others; and it certainly is not with Colonel Burr, nor myself. It is, therefore submitted to the court whether the attorney has made out sufficient cause for continuing the grand jury, unless he will proceed with his case.

Mr. Clay demanded, if this proceeding was in an American court of justice? in a Kentucky court? where men were free, and where the liberty of speech, as well as that of self defence, was yet the common right of all, and held sacred? where gag laws were proscribed, and alien and sedition bills execrated? What! said he, does the attorney for the United States think all law and all right with him? Whence did he derive such an idea? Let me assert, that others have rights; that men are here upon an equality; that if a prosecutor has rights, so has the prosecuted. There is no one clothed with exclusive privileges here. Any man, and every man, has a right to be in court; and none is obliged to sit by in silence while his name is used, and see the trap set, or the net spread, for his liberty

or his life, or any personal convenience whatever. The gentleman says, when an indictment is preferred, we may answer; that until then we have no right to interfere, or as he insinuates, obtrude ourselves upon him, in the discharge of his high duties. He is mistaken: we are not intruders; we have duties as high and as honourable as his to discharge. If he prosecutes, we defend; and we assert a right to be heard, at every stage of his proceedings.

Having, may it please the court, said this much for the right to speak, (said Mr. Clay,) I will now add a few remarks, as to the motion of the gentleman. Since he cannot tell when his witnesses will attend, or that they ever will, it is perfectly unreasonable to keep the grand jury in waiting, and Colonel Burr in suspense. He has business, they all have business which requires their attention. If the witnesses mean to attend, they will be here to-morrow. What we contend for, is, that there shall not be a distant or indefinite postponement, without discharging the grand jury. It is hoped and expected, that the gentleman will proceed, or at once abandon the prosecution. And as he desires the opinion of your honour, whether we are intruders or not, so if you think it right to silence us, I expect you will let us know it.

Upon the latter point, the judge refused to interfere.

The attorney finding himself not supported by the court, in his *ex parte* idea, and that he should have the full weight of the colonel and his counsel to encounter, replied with some animation, to the following effect. This, said he, is indeed a land of liberty! extravagant as it may be in theory, ever outrun in practice, bordering upon licentiousness. A land, where men not only say what they please, but do as they please. A land prone to intrigue, and the refuge of intriguers. A land, where the laws may be violated with impunity, since there is not time to bring the culprit to trial, and to justice. Yes, I well understand Colonel Burr's business, and its urgency. He has good cause for requiring despatch; especially for an indictment, in the absence of witnesses, if he cannot coerce a discharge of the grand jury; and a final abandonment of the pro-

secution. I know he calculates on soon being in a situation to defy courts, and their process. No wonder, therefore, that he is impatient of delay. But the gentlemen are mistaken with regard to the facts of the case. They have not accurately surveyed the ground they have taken. There is yet no indictment; the jury are not sworn as to any particular person; they are to inquire into such matters as shall be given them in charge; they have yet no case given them. Suppose I may have ten indictments to lay before them; and the nature of conspiracy admits it reasonable—will Colonel Burr insist that he shall be first indicted, or else the grand jury shall be discharged; for, that his business abroad is urgent, and he cannot wait? Certainly he could not urge such a consideration. And why? Plainly, because he is not indicted; and therefore, not entitled to any privilege of a defendant. A like reason excludes him now. He is not yet a defendant. Allusion has been made to the affidavit filed; but that has been misapplied—it has performed its office, in effecting the order for the grand jury, and for process. It is not to go to the grand jury—it can have no influence in the cause. Colonel Burr, does not want witnesses.

The point to be decided, is this: Will the court compel me to proceed without the witnesses, and thereby ensure an acquittal, for want of evidence; without giving time to coerce the attendance of those who have contemned its subpoenas; and when it is in the power of the judge by compulsory process to force their attendance? He could not anticipate such a decision. He had already declared that he could not safely submit the case without the absent witnesses—at least, General Adair: and he resided in the next county, about thirty miles from court. He should insist on a postponement, until the witness could be produced in court. That to dismiss the jury, was a discharge of the witnesses now attending, and would render it utterly useless to award compulsory process for those who were absent; and equivalent to an acquittal, or discharge of Colonel Burr, and any others he might find it proper to indict. But the matter is with the judge.

The court decided, that the attorney must proceed with some case, else the grand jury would not be kept in attendance, but discharged.

The officer in a short time took the jury to their room—where they did not remain very long before they returned into court, and said they had nothing before them. The attorney replied, that it was late; and that he would lay an indictment before them in the morning: they were then adjourned, to meet the next day.

An attachment was moved for, against General Adair, by the attorney for the United States, to be forthwith issued; in order that it might be immediately placed in the hands of the proper officer. It was opposed by Colonel Burr's counsel, on the ground that the motion was premature—the witness not being required to appear at any particular hour, but on that day generally; and the day not yet being exhausted, he was not in contumacy.

The court refused the attachment.

The next day, it is believed, the attorney delivered to the grand jury, an indictment against John Adair; charging him substantially with the same offence set out in the affidavit. The jury considered of it, and found, "Not a true bill." It is thought, that it was not much attended to; that although General Adair was suspected, and doubtless privy to Burr's project, and connived at it, that he was nevertheless cautious, and probably had not fully engaged in it, or but conditionally. He has averred his knowledge; but denied his participation. More of this hereafter. At present the case of Colonel Burr demands attention.

The attorney for the United States, having had a conversation with the judge, out of court, on the question, whether he would have a right to attend the grand jury in their room, to examine the witnesses, and to explain to the jury, the application of their testimony, and receiving from his honour, an answer in the affirmative, conceived as a consequence, that he could, by the witnesses present, prove a true bill: and therefore determined to proceed with the examination of Colonel

Burr's case. Accordingly he was indicted, and the jury sent to their room. The witnesses, or some of them, being sworn, the attorney proposed to execute his plan of attending the jury. This he found immediately opposed, by Colonel Burr, and his aids, with the most positive denial of any existing right to the effect proposed. And after some argument, the judge observed, that he had been attorney general for the district of Kentucky, and that he had never claimed or exercised, the privilege now contended for by the attorney for the United States. Upon which the attorney remarked: "Sir, you admitted I had the right to do, what I have now proposed doing." "Yes," says the judge, with more than his usual vivacity, "that was out of court." True sir, rejoined the attorney, this is the first of my knowing that you had two opinions on the subject; "the one private and confidential, the other public and official." He was overruled by the court: and thenceforth considered his cause lost.

On the 5th of the month, the grand jury came into court, with their finding on each indictment, "Not a true bill." To which they added:

"The grand jury are happy to inform the court, that no violent disturbance of the public tranquillity, or breach of the laws, has come to their knowledge.

"We have no hesitation in declaring, that having carefully examined and scrutinized all the testimony which has come before us, as well on the charges against Aaron Burr, as those contained, in the indictment preferred to us against John Adair, that there has been no testimony before us, which does in the smallest degree criminate the conduct of either of those persons; nor can we from all the inquiry and investigations of the subject discover that any thing improper or injurious to the government of the United States or contrary to the laws thereof is designed or contemplated by either of them."

THIS MANIFESTO was subscribed by the whole jury, consisting of twenty-two persons; then, and since, considered respectable, and intelligent. That such a paper was formed among them, or produced by them, were the only circumstances of

reproach that was cast on them. It speaks for itself. If it had been drawn up by Colonel Burr, or one of his attorneys, and put into the hands of the jury, for the purpose of public deception, it could not have answered the purpose more effectually. It was truly mortifying to find the jury become the dupes and instruments of Burr, and his lawyers, unsuspectingly no doubt, to exalt him, and depress the public attorney.

The effect was immediate and extensive. Beyond this, it was to lull suspicion, and to hoodwink jealousy, as to any illicit enterprise, or impending expedition: and it did so, to a great extent. It gave Colonel Burr, an eclat, and an elevation in the country, which he could not, had he been innocent, ever aspired to. The former efforts to open the eyes of the people were the more execrated, as they had been successful, with many.

His attorneys, aware of all this, and triumphing at their own victory, through the prejudices of the judge, the craft of the witnesses, and the gullibility of the jury, could scarcely contain their joy.

Mr. Allin, moved the court forthwith that a copy of the report of the grand jury, might be taken, and published. This was allowed by the judge without hesitation. Which was just as good for Burr's partisans as a proclamation from himself. In court, the impression made on a crowded audience was immediately visible. On the one side, the greatest exultation; on the other, astonishment, and mortification. To men of intelligence, whose ears and whose eyes had been opened to recent occurrences in the legislature, it was a moment of awful reflection, upon the past, the present, and the future! while suspicion magnified herself.

Colonel Burr was at large, hailed and huzzaed by the undersized, caressed and feasted by the higher order. A ball was given in Frankfort to Colonel Burr; and rendered the more imposing by the presence of public characters. This however, had its reaction; and another was given in honour of the attorney, more numerously attended, it was said, and especially, by the ladies. If these are individual matters, they



are not the less evidence of sentiment. At one of the parties about that time, Mr. Street, of genteel person and deportment, accustomed to attend at such places, was beset by some of the connexions of Judge Innis, with the view of putting him out of the room; but he resisted, until he was rescued. In some short time, John Wood, his partner, was seduced from him; principally by the address and solicitation of Henry Clay.

By this epoch, the president's proclamation had arrived; Colonel Burr's friends in Ohio had been routed, his boats and provisions seized, and himself gone to Nashville; where he, and General Adair, arrived about the middle of December; and after lodging together a night, the general proceeded by land towards New Orleans, the colonel by water with a few boats to the mouth of Cumberland, to meet his forces descending the Ohio. But these had met with a sad disaster in the state of Ohio: about ten of the boats, a part of their arms, and a large proportion of their provisions, had been seized; and many of "the choice spirits," who had intended to embark in the flotilla, had disappeared. The remaining boats, &c. passed the falls of Ohio about the 20th of the month; and were at the point of rendezvous by the 22d. At this place, the would-be emperor surveyed the remnant of his shattered host, found a beggarly account of renégadoes, and himself an abandoned outcast and vagrant. The guilty multitude, if ever numerous, whom he had deluded and seduced, had slunk from him like troubled ghosts at the dawn of day; and not over two hundred were to be found. Their leader had been exposed, the conspiracy detected, and the expedition defeated; by means part unfolded, and still further to be detailed.

From the mouth of Cumberland, the colonel proceeded to New Madrid or its vicinity, with a faint hope that he should meet some recruits coming down the Mississippi; here again he experienced disappointment. The last hope was now turned on New Orleans and that region; Bayou Pierre was named as a point of reunion; and the party dispersed. Burr and others landed in the Mississippi territory. It was now rumoured, that General Wilkinson had betrayed Burr, and occupied the city of Orleans in military array against him.

Colonel Burr, after rambling for some time in a forlorn condition, was made prisoner; and destined, as it turned out, to be tried in Richmond, Virginia. That was, however, a matter of the next year. Yet, belonging to 1806, will be mentioned, as the first measure taken by the president of the United States in relation to the conspiracy just developed, the deputation of a private agent, not inaptly called a spy—at what time is not certain, but so as that he reached Chillicothe, the seat of government in the state of Ohio, about the 1st of December.

The 2d of the month, on his communication and some other information, the governor of Ohio sent a confidential message to the legislature, then in session; whereupon a law was passed, on the authority of which the seizures already mentioned, were made. The presidential agent, thence moving southwardly, arrived at Frankfort about the 22d of the same month, and in like manner procured the passage of a law on the 24th; in virtue of which detachments of militia were ordered to different points on the Ohio river; with little or no effect, as the affair was over. The agent taking his departure from Frankfort, went on to Nashville, where he appeared about the 1st of January. And here, he seems to have lost the tract of Burr.

On the 25th of November, the president received General Wilkinson's letter of the 21st of the preceding October, and on the 27th of the same November, issued his proclamation, in order to suppress the conspiracy; which he mentions in his communications to congress of the 2d December. What is yet to be said on those topics will fall into the next chapter.

In the interim, some attention will be paid to the proceedings of the legislature.

The first act was to make CASEY county, to have effect from and after the first Monday in May, 1807—"Beginning on the Lincoln and Pulaski line, where, by running at right-angles from it will just include in the new county, Joseph Dismuke's, on the head of Indian creek; thence a direct line to the mouth of Pine Lick creek; thence to the great suck on Carpenter's creek, leaving Joseph McCormack's in the old county; thence

a direct line to the great road west of Carpenter's station, leaving George Carpenter in the old county; thence to the head of Harriss's creek; thence to the great road at Charles Depeau's, leaving him in the old county; thence along the foot of the knobs, with the said road, to where the county line crosses the same, and with the county line between Mercer and Washington, &c. around to the beginning."

"An act providing for the redemption of land sold for taxes," allowed the prior owner two years to redeem the land, by paying the amount of taxes and costs, with one hundred per cent per annum. It also provided, that such tracts of land as would not sell for the tax and costs due when exposed, should be passed to the state; redeemable within two years, by paying the tax, costs, and fifty per cent per annum—computing time from the day of sale, to the time of payment.

CLAY county was erected at this session—"beginning on the Kentucky river, midway between the mouths of Ross's and Sturgeon creeks; thence along the ridge which divides the waters of Sturgeon creek from those of Ross's and Station Camp creeks, to the dividing ridge between the waters of Kentucky and Rockcastle; thence along said ridge, to the head of Horse Lick creek; thence down said creek to Rockcastle; thence down Rockcastle to the state road leading from Madison court house, to the Cumberland Gap; thence along the said road to Langford's road, leading to Goose creek salt works; thence with the same to Rockcastle; thence up Rockcastle to the head; thence along the dividing ridge between the waters of Cumberland and Kentucky, to a point from which running due east, will pass by Collins' fork of Goose creek, midway between Outlaw's salt works, and Peter Hammon's; thence a course to strike the ridge between Cumberland and Kentucky at the War Gap; thence with said ridge to a point at which, running northwest, will strike the mouth of Lott's creek; thence up Lott's creek to the head; thence with the ridge dividing the waters of Kentucky from Licking, to the head of Quicksand; then down Quicksand to the Kentucky river; then down the Kentucky to the beginning." To have effect from and after the 1st day of April, 1807.

Another act, establishing the county of LEWIS, was of this session. It was to have effect from and after the first day of April, 1807; with the following boundary, to wit: "beginning on the Ohio river, at the mouth of Crooked creek; from thence on a straight line to the forks of Cabin creek; thence a direct line to the lower corner of Fleming county on the north fork of Licking; up the same, and with the Fleming county line, to Greenup county line; with the same to the Ohio, and down the same to the beginning."

HOPKINS county, was the production of this session: it commenced its corporate existence from and after the first day of May, 1807, by the bounds thus described: "beginning at the mouth of Deer creek; thence up Green river, to the mouth of Pond river; thence up Pond river by the county line, to Tradewater; thence down Tradewater to the mouth of Owen's creek; thence a due north course, to the main branch of the Crab Orchard fork; thence up the main branch of the said Crab Orchard fork, until a line at right-angles will strike the head of Black's and Newman's sugar camp branch; thence down the same and Deer creek, to the beginning."

An act was passed, declaring the offices of justice of the peace and jailer, incompatible—it also declared that neither judge nor justice of the peace, should be a surveyor; and *vice versa*; making the acceptance of the one office, vacate the other.

The fees of justices of the peace, were in part taken from them, by an act of this session, which declares that the fees allowed by the act of last year, were oppressive to poor people: and thence proceeds to abolish the fees for issuing warrants, executions, subpoenas, and giving judgments.

Some dissatisfaction had previously existed in relation to the chief justice, George Muter, whose age was thought to have incapacitated him for the office; when the rupture took place in the court, by the detection of Sebastian as a *pensioner* of Spain, and his resignation; which more or less turned public attention on the rest of the judges, and apparently sharpened discontent as to Judge Muter; who, apprised of it, and being taught to expect that provision would be made by law for his

support, if he voluntarily withdrew from office, did so, by resignation: in consequence of which, an act passed allowing him an annuity of three hundred dollars during life; payable quarterly at the public treasury. This annuity, getting the name of a *pension*, was rendered unpopular, and the act repealed at the next session. The preamble to the original act, assigns *age* and *infirmity* as the cause of his resignation; and suggests, as the reason for the allowance, "that he had not accumulated a *decent support*, in the course of a life spent in the service of his country, in both a military and civil capacity." Allowing the premises to be true, yet it was said, in the first place, that there was nothing particularly meritorious in those services, either military or civil—that they had been in the usual routine of office, in no manner distinguished, by talents or utility—and that he had already received the full pay and emoluments attached to his employments: and hence, there was nothing due to him on that account.

In the second place, if he was poor, so were many other meritorious citizens, for whom no pensions had been, or could be, allowed. That when he was in the receipt of money, he should have provided for old age—that if he had not done it, to provide for him would be of ill example, to others, who might be induced to dissipate the emoluments of their office, in the expectation, they would be supported upon the public treasury: while care and economy, were to be inculcated, as being equally necessary, in both public and private life.

The act to prevent unlawful warlike enterprises, has been already mentioned, as being applicable to the case of Colonel Burr. It was limited in its duration to the end of the next session of the general assembly. Why? is not readily conceived.

The salaries of the judges of the court of appeals, were raised at this session, by the addition of the sum of one hundred and sixty-six dollars, sixty-six cents, and seven mills, to each, annually.

The third act, "to incorporate the Ohio Canal company," passed at this session. The two latter were amendatory.

Without intending to say any thing as to the details of the acts on this subject, or to question the policy of the measure, could it be carried into effect, there is no good reason perceived why a few reflections may not now, as well as any other time, be thrown on the subject, as one which belongs to the United States: and in the course of which, it will be suggested, that before Kentucky can rightfully take the water out of the natural channel of the Ohio river, she, or her incorporation, must have the consent of Indiana, possessing the opposite shore, and of the United States, having the paramount control of the case.

That these ideas have not entered into the system of Kentucky legislation on the subject, would, as an objection, be entitled to weight against the hypothesis now advanced, had Kentucky been uniformly attentive to her federal obligations: as the facts are, the objection, if made, would have but little weight. It will nevertheless be held necessary to produce the ground-work of the proposition which is intended to be maintained, in the form following:

*Kentucky, being one of the United States, is not possessed of the plenary right, by means of a canal, or otherwise, to divert, or withdraw, THE OHIO RIVER, from, or out of, its present natural channel; nor in any sensible degree, so as to affect its navigation, or other use.*

To sustain this view of the subject, two sources of authority will be assumed, from which to draw the argument: 1st, The constitution of the United States; 2d, The compact between Kentucky and Virginia.

From the first, is derived the following declaration of power: "*Congress shall have power to regulate commerce with foreign nations, and among the several states, and within the Indian tribes.*" (See Art. I. Sect. 8th, par. 3d.) Again: "No state shall without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state," &c. (See Art. I. Sect. 10, par. 2d, latter sentence.) Also, among other things: "No state shall pass any law impairing the obligation of contracts," &c. (See Art. I. Sec. 10, par. 1st.)

From the second, is drawn the seventh article, in the followings terms, viz:

"That the use and navigation of the Ohio river, so far as the territory of the proposed state (Kentucky) or the territory which shall remain within the limits of this commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth, and of the proposed state on the river as aforesaid, shall be concurrent only, with the states which may possess the opposite shores of the said river."

For the present, it will merely be remarked, as a fact too well known to need further proof, that the state of Kentucky is bounded on, and by the southeast side of the Ohio river; having no territorial right in or over its bed. While her right of navigation, and of jurisdiction, is defined in, if not solely derived from, the aforesaid seventh article of the compact. Nor can any right not recognised in that compact be justly claimed, or legally exercised, by this commonwealth: for if there could, then might she evade her agreement: a consequence not to be tolerated, upon the principles of our governments, state and federal. True, Kentucky possesses one of the shores of the river, and was she a *plenary sovereign*, unshackled by constitution, or other compact, she might rightfully claim to the middle of the river; as might also the nation possessing the opposite shore. By a compact between the two, they being free to contract, they might communicate to each other concurrent rights from shore to shore. In the case of Kentucky and Indiana, they have the concurrent right to use and navigate the river with all the other citizens of the United States, in virtue of the compact as set forth in the article recited; and the jurisdiction concurrent over the said river with each other only. Thus, in all respects, are the two states placed on a reciprocal footing of equality in, and over, the river. And were they the only parties concerned, they might agree that either, or both, should make a canal on her own side, and drain a part, or the whole, of the water out of the river into such a channel. But

neither could do it, without the consent of the other: to attempt it, would give just cause of complaint—to persist, would be good cause of war. These two states are not, however, the only parties who have a right to the *use and navigation* of the river; it is expressly made common to all the citizens of the United States, by the same article of the compact; and were not that so, they would still have the right of use and navigation in, and on the river, by the constitution of the United States, which secures to all her citizens concurrent rights with the citizens of each state.

Hence the consent of congress becomes a necessary concomitant, in any agreement on the subject of opening a canal, by either state.

Were the river exclusively the property of Kentucky, and within her territorial limits, she might by an act of the legislature, divert its water from the present, into a future channel; taking care, nevertheless, to restore the stream again to its natural bed before it left the state. The common law principle with respect to individual rights on the subject of water courses, is applicable to nations; being the plain dictate of reason, and of justice, in both cases.

It is no argument, which can withdraw the subject from the operation of the principles above laid down, to say, that the navigation of the Ohio is not to be, or cannot be, affected by a canal. The mere possibility of its being otherwise, is sufficient to destroy the force of the observation, and deprive it of every ground of justification, or of right.

But the fact is, that both fishing and navigation may, and will be affected by a navigable canal, to the obvious impairment of the use and value of both. It has been asserted, and is true, that the whole current of the Ohio may be turned into a canal. This fact puts the subject of right, in a clear point of view. Suppose it were Indiana, instead of Kentucky, that was about to begin a work which might empty the bed of the Ohio of its water, by taking it into her exclusive territory; would not Kentucky have just cause to say to her, you have



no right to deprive me of the water of the river, in doing so you destroy my right of use and navigation, which I hold equal to yourself. Most undoubtedly she would. Most undoubtedly Kentucky would protest against the measure in its commencement, as its termination might be greatly injurious, if not ruinous, by obstruction and by tolls or taxes. Such right as she would have to complain were Indiana making the attempt to open a canal of the kind supposed, such right has Indiana to complain of a similar attempt on the part of Kentucky; and not only Indiana, but the union. Principles of such magnitude to the common rights of states, and of individuals, cannot be suffered to be reduced to practice with impunity, without compromising the rights, and endangering the peace of the union: but by previous agreement, sanctioned by all the parties concerned, in the manner pointed out by the constitution of the United States, the desired object may be effected.

The execution of the act for opening a navigable canal at the falls of Ohio, it is believed, would be practising a violation of the seventh article of the compact, and hence a violation of the constitution of this state, as well as of that of the United States. It results, that the legislative act, which affects to sanction that measure, is itself *a violation of both constitutions*. Now, whether an act of a state legislature violates a contract, or compact, or not, in no manner depends upon the magnitude of such violation, or the extent of the effects flowing from it; for all *impairment*, even in the smallest degree, is forbidden. Is the house to be guarded from thieves, then keep the door shut: an entrance is a violation of its sanctity, and of its safety. More need not be said here, on this topic.

"An act to establish a state bank," was the offspring of this session.

It was fixed at Frankfort, but to follow the seat of government if moved—its capital of one million of dollars, was to be divided into ten thousand shares, of one hundred dollars each. Five thousand of these shares, were reserved for the use of the

state; two thousand to be subscribed for by the executive from time to time, as money came into the treasury for the sale of vacant lands; the other three thousand shares on the part of the state were reserved for future disposition, they have been in part subscribed and the residue sold. The other five thousand shares were to be taken by individuals, &c.

The general assembly to elect the president and six directors annually, the private stockholders were to choose six; making in all, twelve directors.

It was incorporated, to continue until the last day of December, 1821. Its powers were ample; and it soon went into operation.

Some attention will be paid to its progress, success, and declension; as affording an useful lesson to those who have money, never to take into partnership a legislature, the majority of whose members having little or none, desire it exceedingly, and with equal dislike see it in the hands of others—with too little industry and too much impatience to acquire it in an honest way themselves, they will not even permit others to use their own advantageously.

“An act for raising the wages of the members of the general assembly,” made their daily pay two dollars for attendance, and the usual allowance for travelling.

In all, ninety-four acts were made this session, embracing the usual objects, where they have not been particularized.

The revenue yielded to the treasury in this year—— it can't be said what: the report is defective.

The disbursements were sixty-five thousand and six hundred dollars, sixty-two cents and two mills; which authorizes an inference that the receipts might be equal or more.

## CHAP. X.

*Sequel of Burr's conspiracy—Review of the President's conduct—Wilkinson, &c. implicated—Trial of Burr in Richmond—Duces Tecum awarded to the President of the United States.—Treason as defined in the constitution—Burr not with assemblage in Virginia—Mouth of Cumberland out of courts' jurisdiction—Burr acquitted—H. Marshall elected, &c.—Attack on the Chesapeake—a view of the case—Proceedings against Innis—Acts of the legislature, &c.*

[1807.] The year 1807 succeeds, bearing the impressions and agitations of the past; which were, however, in the decline. The project of Colonel Burr, though deriving its resources from a great and diversified population, extending its ramifications from New York to Orleans, and making great pretence to support; is not, after its explosion, believed to have combined half the force he boasted of to Wilkinson. Enough, nevertheless, would have been assembled, had it not been interrupted, to have plundered the bank at Orleans, and seized Baton Rouge, or possibly, taking the vessels in the Mississippi, have effected a landing at Vera Cruz. Waving conjecture as useless, and having but little room for further notices, a rapid review only can be taken of the president's conduct, and that of a few others, who were implicated with Burr. The generals, Wilkinson, Dayton, and Adair, are the most prominent, and need only be further mentioned. And first, of Mr. Jefferson: That his true character in this affair of Burr, has not generally been understood, is most obvious—whether it ever will be, quite uncertain.

That with the positive information of its active existence from early in February, 1806, he should have taken no one step to put the people on their guard, nor to arrest the conspiracy, until November, is a manifestation of motives, and a cause, utterly at variance with good government, as they were with his public duties.

That he at length, as is learned by his communications to congress, of January in this year, 1807, instead of issuing his

proclamation when, by his own admission, he deemed it expedient to act, he deputed a secret agent to spy and to pry, "going on to hold conferences with governors, and all officers civil and military," &c.; was certainly a degradation of his office, as dishonourable to himself as to the allegiance of the good citizens who were thus to be espionated; and who only wanted the public declaration of the government to that effect, to have chased the conspirators out of the country.

That to have given the agent the instructions which he says he did, "to investigate the plots, going on to enter into conferences (for which he had sufficient credentials) with the governors, and all other officers, civil and military, and, with their aid, to do on the spot whatever should be necessary to discover the designs of the conspirators—arrest them—bring their persons to punishment—and to call out the force of the country to suppress their proceedings"—was to have exceeded all constitutional authority as president, if to be executed by the power of the United States; but if by state authority, then a compromise of his duty as president. It was palpably a cunning contrivance of Mr. Jefferson's, in the first place, to conceal himself from public view until his *spy* had ascertained, "going on, conversing," &c. whether the majority of the people were ripe for revolution, or not: if they were, the agent was to have sneaked back to the president with the report: and so the matter would have rested until the meeting of congress, and then they might have determined on the course to be pursued: but if the great body of the people were opposed to Burr and his schemes, including governors, officers, &c. why then, the agent, shewing his credentials, was to get the state authority, not even to execute the laws of the United States, but to have a law, or laws, passed; and, in virtue of such, "to do on the spot" what was necessary. And this is thought to be demonstrated by the instructions and the conduct of the presidential agent, consummated in Ohio and Kentucky by the passage of laws already mentioned. While this may also explain why the attorney who had attempted to execute the act of congress, by prosecuting Burr under it, was by the president dismissed from office.

That two days after the president had received the letter of General Wilkinson, of October 21st, in which he is assured that Wilkinson has betrayed Burr, and will support him, he issued his proclamation, in defiance of conspirators—doubting not from the combined intelligence which he had received, as well from his agent as from his general, that all real danger was over.

If any man who understands the motives of Mr. Jefferson's conduct on these points, can give them in explanation of his course, a more rational or consistent exposition, it will be most cheerfully adopted instead of the foregoing.

In the solution of the question what were Burr's objects, his letter to Wilkinson, of the 29th of July, is too precious a testimony to be omitted, as it proves the accuracy of the intelligence received and transmitted by the United States' attorney in Kentucky. It follows:

"I, Aaron Burr, have obtained funds, and have actually commenced the enterprise. Detachments from different points, and under different pretences, will rendezvous on the Ohio, 1st November. Every thing internal and external favours views: protection of England is secured: T—— is *going* to Jamaica, to arrange with the admiral on that station; it will meet on the Mississippi—England—Navy of the United States are ready to join, and final orders are given to my friends and followers: it will be an host of choice spirits. Wilkinson shall be second to *Burr* only: Wilkinson shall dictate the rank and promotion of his officers. *Burr* will proceed westward 1st August, never to return; with him go his daughter; the husband will follow in October, with a corps of *worthies*.

"Send forthwith an intelligent and confidential friend, with whom Burr may confer; he shall return immediately, with further interesting details: this is essential to concert and harmony of movement: send a list of all persons known to *Wilkinson*, west of the mountains, who may be useful, with a note delineating their characters. By your messenger send me four or five of the commissions of your officers, which you can borrow under any pretence you please; they shall be returned faithfully. Already are orders to the contractor given to forward six

months' provisions to points Wilkinson may name; this shall not be used until the last moment, and then under proper injunctions: the project is brought to the point so long desired. Burr guarantees the result with his life and honour, with the lives, the honour and fortunes of hundreds, the best blood of our country. Burr's plan of operations is, to move down rapidly from the Falls on the 15th November, with the first 500 or 1000 men, in light boats now constructing for that purpose, to be at Natchez between the 5th and 15th of December; there to meet Wilkinson; there to determine whether it will be expedient in the first instance to seize on or pass by Baton Rouge: on receipt of this, send an answer; draw on Burr for all expenses, &c. The people of the country to which we are going are prepared to receive us: their agents now with Burr say, that if we will protect their religion, and will not subject them to a foreign power, that in three weeks all will be settled. The gods invite to glory and fortune: it remains to be seen whether we deserve the boon: the bearer of this goes express to you; he will hand a formal letter of introduction to you from Burr; he is a man of inviolable honour and perfect discretion; formed to execute rather than to project; capable of relating facts with fidelity, and incapable of relating them otherwise: he is thoroughly informed of the plans and intentions of , and will disclose to you as far as you inquire, and no further: he has imbibed a reverence for your character, and may be embarrassed in your presence: put him at ease, and he will satisfy you.

*"29th July."*

This was produced and acknowledged by Wilkinson: and after reading it, who can doubt of the previous arrangement between the two? or of the object of the conspiracy? There is no attempt at seduction here. The address is open, plain, and direct, to a known prostitute. That she also wanted with others, need not be doubted.

*Extracts from General Eaton's deposition.*

Some time in the winter of 1805-6, at the city of Washington, Colonel Burr held various conversations with me, on the

subject of a contemplated military enterprise to the westward; when at length apparently resigning myself to his influence, "Colonel Burr now laid open his project of revolutionizing the territory west of the Allegheny; establishing an independent empire there, New Orleans to be the capital, and himself the chief; and thence organizing a military force on the waters of the Mississippi, carry conquest to Mexico."

"From the tenor of much conversation on the subject of Wilkinson's co-operation, I was prevailed on to believe that the plan of revolution meditated by Colonel Burr, and communicated to me, had been concerted with General Wilkinson, and would have his co-operation."

Soon after this, I said to the president, "If Colonel Burr was not disposed of, we should within eighteen months, have an insurrection, if not a revolution, on the waters of the Mississippi." The president replied his confidence in the people: and making no inquiry of me as to particulars, I concluded that he did not want to hear more, and was silent.

I returned to Massachusetts, where I resided. In the October following, saw a letter from Mr. Bellnap, who lived near Marietta in Ohio, to Mr. Danielson, stating that boats were building, &c. connected with Colonel Burr:—soon after which "I made a communication to the president of the United States, through the hands of the post-master general, stating the views of Colonel Burr."

That General Jonathan Dayton was one of the fraternity, there is the evidence of his own letters to prove. They follow:

*"Copy of a letter from Gen. Dayton to Gen. Wilkinson, written in cypher, except those parts printed in italics. This cypher was designed by Gen. Dayton, and founded on the hieroglyphics known to Gen. Wilkinson and Col. Burr."*

July 24th, 1806.

X A ! . ) O ~ I - ^ " V ^ - O. IV".  
[ ]

It is now well ascertained that you are to be displaced in next session. Jefferson will affect to yield reluctantly to the public sentiment, but yield he will; prepare yourself therefore for it: you know the rest.

You are not a man to despair, or even despond, especially when such prospects offer in another quarter. Are you ready? Are your numerous associates ready? Wealth and Glory, Louisiana and Mexico. *I shall have time to receive a letter from you before I set out for Ohio*—OHIO. Address one to me here, and another to me in Cincinnati. Receive and treat my nephew affectionately, as you would receive your friend.

DAYTON.

July 16th, 1806.

MY DEAR FRIEND: As you are said to have removed your head quarters down the river, and there is a report that the Spaniards intercept our mails which pass necessarily through the territory occupied by them, in order to reach you, I think proper to address you in cypher, that the contents may be concealed from the Dons, if they make so free as to open the letter. Take the following for the catch word or check word (and you may very readily decypher the figures.) Viz: in your own hieroglyphic [.]; but in your own alphabet thus—[Hieroglyphics.]

V-—O-IA

Every thing, and even Heaven itself, appears to have conspired to prepare the train for a grand explosion;—are you also ready? For I know you flinch not when a great object is in view. Your present is more favourable than your late position, and as you can retain it without suspicion or alarm, you ought by no means to retire from it until your friends join you in December, somewhere on the river Mississippi. Under the auspices of Burr and Wilkinson I shall be happy to engagé, and when the time arrives you will find me near you.

Write, and inform me by first mail what may be expected from you and your associates. In an enterprise of such moment, considerations even stronger than those of affection impel me to desire your cordial co-operation and active support.

DAYTON.

Wealth and honour.	}	Burr and Wilkinson.
Adieu.		
Courage and union.		



Let me hear from you by mail, as well as by the first good private conveyance, and believe me, with the best wishes for your prosperity and happiness, most truly,

Your friend, and servant,

JONA: DAYTON.

If you write in cypher } [Hieroglyphics.]  
use the same word, viz: }  $V^{\circ}-O-IA$

The last, though not the least worthy, is General John Adair. And the evidence as to him, is not the least conclusive. That he ~~may~~ not be thought in any manner slighted, that is also inserted; by way of shewing that the attorney might well have considered him a material witness—and even indictable, as he could not get his evidence. See the following letter, &c.

MY DEAR SIR: I did not answer your letter by Taylor, but I did better; I procured him a pension of twenty dollars per month. I was to have introduced my friend Burr to you, but in this I failed by accident. He understands your merits, and *reckons* on you. Prepare to visit me, and I will tell you all. We must have a peep at the unknown world beyond me. I shall want a pair of strong carriage horses, at about 120 dollars each, young and sound, substantial, but not flashy. I am in health, and, in spite of the neglect of friends, and the shameful omissions of attorneys, have this day given sir—a damper. Perdition overtake the Jew scoundrel; he had nearly destroyed me by a decree, of which I had no intimation, although it is almost seven years old. Enough for the present.

Thine ever,

JA. WILKINSON.

*Rapids of Ohio, May 28th, 1805,*

11 o'clock, A. M.

I sail in an hour.

Gen. ADAIR. Write me.

Private.

*Extract from General Adair's publication, 1st of March, 1807—  
made at Washington city.*

“So far as I know or believe of the intentions of Colonel Burr, (and my enemies will agree that I am not ignorant on this subject) they were to prepare and lead an expedition into Mexico,

predicated on a war between the two governments; without a war, he knew he could do nothing." Again—

"I thought this object honourable, and worthy the attention of any man; but I was not engaged in it," &c.

Extracts from General Wilkinson's publication, dated New Orleans, April 17th, 1807: and referring to a previous publication of General Adair's, says it is not unanswerable, and shall be noticed in due time—at the present he publishes the statements of Doctor Claiborne, &c.

*Extracts from Claiborne's statement.*

"General John Adair and Colonel Burr, arrived in Nashville about the middle of December last, (1806) from Kentucky. I know not whether they came together; they lodged at the same house, and occupied, I understood, one room. They left Nashville in a few days of each other; Adair by land, and Colonel Burr by water."

(Signed) "THOS. A. CLAIBORNE."

*Extract from the Affidavit of Jo. F. Carmichael.*

"Mr. Ralston (one of Burr's party) opened his business with this deponent, stating that he had descended the Mississippi as far as New Madrid, in company with Colonel Burr, where he left him; that General Adair had gone to New Orleans, by a circuitous route, and that his intention was to communicate with General Wilkinson, and return so as to meet them at my house (Bayou Pierre) about that time, (the 11th of January, 1807) if possible," &c. &c.

(Signed) "JO. F. CARMICHAEL."

"County of Orleans."

*Extract from the affidavit of J. S. Smith.*

"About the 25th of January, 1807, General Adair, (a prisoner of the United States then in my charge) observed that if he had been permitted to have remained forty-eight hours in New Orleans, unmolested, it would not have been in the power of General Wilkinson to have arrested him; that he believed he had more friends in Orleans, than the general—and if he had known, or thought the general would have arrested him, he would have brought with him his equipage for his protection, &c.

(Signed)

"J. S. SMITH."

*Extracts from General Adair's publication, dated 16th of June, 1807—in reply to Wilkinson's.*

"It will always be less difficult for me to explain my intentions, than for the general (Wilkinson) and his supporters to tell why he sent an officer with a party last summer, from St. Louis, into the neighbourhood of Santa Fe; where it is said, they are now prisoners—or even why he sent, in October or November last, a gentleman from the Mississippi territory, who travelled by land to Mexico; from thence to Vera Cruz, and returned by water to this place: was that really to buy mules?"

"Wilkinson seems anxious, in his equivocal publications, to impress a belief on the public mind, that he has not written to me on the subject of an *expedition into Mexico*."

"In the spring of the year 1806, while in the city of Washington, I received a letter from him, (Wilkinson) dated St. Louis, in which, speaking of Mexico and Santa Fe, he says, do you not know that I have reserved these for my own triumphal entry?" &c. &c.

"About the 1st of November, 1806, I received a letter from him, (Wilkinson) dated Natchitoches, September 28th, 1806, in which he detailed the number of troops under his command; the number of Spanish troops opposed to him, and by whom commanded; the relative situation of the two armies, together with the orders he acted under; and assures me he will fight in six or eight days at farthest. In that letter are the following words: 'The time long looked for by many, and wished for by more, has arrived, *for subverting the Spanish government in Mexico—be you ready and join me, we will want little more than light armed troops,*'" &c.

Then after expressions signifying that he (Adair) understood the meaning—and after referring to the president, he says—*Let him then prosecute Wilkinson; he will know where to find the above proofs—proofs that scepticism itself shall not doubt.*"

*From General Wilkinson's evidence on Burr's trial.*

Speaking of a man who had rowed Latrobe (as he said) from Pittsburgh down the Ohio, the witness says: "He informed me, that he had passed to Frankfort, in quest of General Adair, for whom he had despatches from Colonel Burr; and not hearing from him there, had returned back to Lexington, in pursuit of

him; where he was informed by Major Waggoner, (a crony of Adair's,) that General Adair being in ill health, had gone to some medical spring; and that if he would wait a few days he might see him; that he did so, and thus had an interview with him without incurring any suspicion; at which time he delivered his despatches. He said General Adair was zealously engaged in the enterprise, and observed, 'Tell him that I will not write to him, but that I expect to meet him at the place; that he may depend I will meet him at the spot;' or words to that effect."—This was fall, 1806.

Had Burr's project been only an expedition against Mexico, and that according to General Adair's view, predicated on a war between Spain and the United States, there was no reason for a clandestine intrigue, a mysterious concealment of the object—or for a false explanation of the intended use and design of the boats, and other preparations, &c. Had the settlement of Bastrop's grant, been the purpose for which they were intended, there was still less reason, if possible, for concealment or denial: besides, women and children, families, would have made a part of the equipment. The precipitate flight of Blannerhassett, is a faithful expositor of his previous declarations, in favour of revolutionizing the western states, and Spanish colonies, and uniting them under one government, at the head of which was to be placed Colonel Burr:—whom we have seen a prisoner; and now in the course of the narrative, is approaching a prosecution ordered by the president to take place in Richmond; and for which great preparations were made, in both counsel and witnesses.

About May, the court was opened, for preparatory proceedings; such as a grand jury, indictment, &c. It seems, that the prisoner, had been previously accommodated with lodgings in the state penitentiary. Then, on application, and by order of court, he was removed into the city: that on the charge for a misdemeanor, he gave bail, it is believed, in a recognisance of ten thousand dollars: that afterwards upon being charged with treason, "in making war upon the United States," additional bail was required, of fifty thousand dollars; and ordered,

at twenty thousand. The prisoner was indicted on both charges. In the course of proceeding, a subpoena *duces tecum* was moved for on the part of Colonel Burr, to the president of the United States, requiring his attendance in court with certain papers, described in an affidavit filed, as a ground for the motion; and opposed by the attorney for the prosecution on the score of executive exemption from the influence of such process. It was by the court decided that the party was entitled to the use of the paper, as he had sworn to its materiality, and that it was believed to be in the hands, or possession, of the president; therefore, the process required, should go to him. That in despotic governments, and even in England, where the head of the executive department was not subject to process of any kind from a court, such was a principle in the government. But that the constitution of the United States, was different. That under it, no man was privileged to refuse obedience to judicial process, without assigning a reason, of which the court was to judge. That there should be no doubt, but that proper attention would always be paid to the situation of the president of the United States. That the process ought to issue as requested. That every citizen had a right to justice—of course to all the legal means of obtaining it: that the procurement of evidence, was one of the most importance; and the court could find no excuse for refusing to the motion of the applicant, that kind which by law was authorized, and appropriate to his case. It must therefore issue. That, whether the president obeyed, or not—the court made no anticipation. It was enough for the court, to do its own duty.

It should be added, that the process was executed on the president—that he declined giving any answer, to the officer, or messenger—that he did not in fact attend—but it is believed some time afterwards sent either originals or copies of papers to the prosecuting attorney: and which are supposed to have answered the purpose.

It is owned that an accurate statement of all the facts, is not accessible; that those stated are from impressions of some standing; but believed to convey a correct view, in the outline,

of the case. While it is recollected, that the publications from New York announced intelligence from that city, that in some case depending there, that a subpoena for some of the heads of departments to attend court as witnesses, had been disobeyed, or not complied with.

It is thought that every reader of intelligence and reflection may at once see both the importance and the delicacy of the relation between the executive and judicial departments, in such cases; and that it should be an early object with congress to regulate by law, the steps to be taken for the purpose of obtaining the evidence deposited in the executive department, when in any case it may be proper, or the course of justice might be impeded or frustrated without its acquisition.

The only other part of the trial of Colonel Burr to be noticed in this history is, that the indictments being found *true bills*, he was arraigned, and tried, on the testimony of many witnesses; who proved a perfect confirmation of the intelligence given by the attorney for the United States in Kentucky to the president, but that Colonel Burr was not present on Blannerhassett's island, the only point within the jurisdiction of the court at which any force was assembled, armed or unarmed, with a view to any expedition; while there was a failure of proof that Colonel Burr was the instigator of the meeting, or that it assembled with the intent of making war on the United States, or had in fact committed or designed to commit any breach of the peace within the United States; there having been however from thirty to forty men, some of them armed, on the island at one time, and thought to be engaged by Blannerhassett and others. As to the assemblage at the mouth of Cumberland river, or elsewhere, out of the jurisdiction of the court, limited to Virginia, the evidence of it being improper to go to the jury, should not, it was thought, influence their opinions; and so the law was laid down to them.

On the charge of treason, it was defined in the constitution of the United States, to "consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." But talking of war, especially of future war, was no overt act of war; that war, in the meaning of the constitution, must be either actual or potential, either of which required force, and that such force must be visible; and in the latter case, where the war was not yet commenced, the force should at least be assembled to some respectable amount, and with the avowed, or other demonstrative evidence of the intent to enter into the war; and that to find any man guilty of the war, he must either be present in the assemblage, or known to be consenting, tested by open acts thereunto. That it was with the jury to decide whether the person charged, was guilty or not guilty. Without offering this exposition of the constitution, as a transcript of that delivered by the court, it is given as a paraphrase only. The jury very soon after receiving the charge, returned from their retirement, with a verdict of "Not guilty on this indictment."

It was submitted to the prosecutors for the United States, whether they desired the prisoner to be recognised to appear and answer elsewhere; which, after consultation, they declined; and he was discharged; perfectly cured of his passion for revolutionizing the west and creating empire for his own rule; as it is inferred, not only from what he suffered, but from the quietude of his life since: a merited disrespect attends him.

In Kentucky, new scenes engage attention. "The Western World" was yet in operation; and public opinion still divided on this question, among others, whether Harry Innis should continue to hold his judgeship, or measures be taken to turn him out? Many were scandalized at his conduct, and thought the country dishonoured by his unmolested retention of his office. He, however, had given proofs of his *anti-federalism*; which endeared him to Mr. Jefferson, and the party. While it devolved on Humphrey Marshall, labouring under the accusation of being a *federalist*, to reduce his former resolution of becoming a candidate for the house of representatives to prac-

tice; in order, if elected, to try the sense of the country in relation to the judge. Accordingly he declared himself a candidate; and produced almost as much agitation among the immediate adherents of the judge, as the commencement of "The Western World."

To defeat him, was the grand object—and for this purpose, one opposing candidate was to be selected, all others on their side kept back. Mr. Nathaniel Richardson, a very worthy farmer, who had for some years before unsuccessfully essayed the practice of the law, was selected: and seldom had greater efforts been made on any similar occasion, by newspaper publications or otherwise, than those which forthwith ensued. All the horrors of federalism was now conjured up, and set out in new dresses; or the old: Mr. Marshall, not merely called upon to answer for his own offences, real or imputed, was to be made responsible for such as had been or might be ascribed to others; and that, to Spanish conspirators, French partisans, and Burrrites;—among whom might be found the most profligate members of society; and certainly very many worthy citizens, whose prejudices long trained, could the more easily be employed to mislead their judgments.

About eleven hundred votes were given at the election, which terminated in Marshall's favour by a small majority. This point gained, he thought on further means. The sum of his federalism, was to enable the people to see the foul blotch which filled the federal court, as a necessary inducement to them to unite in an attempt to wipe it out.

Before more is said on this subject, as one occurred prior to the election, and during the canvass, in the midst of which it was announced, of much more importance, that is next to be mentioned; as it greatly agitated the country. It was the attack made on the Chesapeake, an armed ship of the United States, by the Leopard, a ship of his Britannic majesty; in which several lives were lost, and other persons wounded, to the number of about twenty in all: this was at sea, off the Virginia Capes. The occasion was briefly this: Four sailors



from on board a British ship, getting to Norfolk, enlisted with an officer of the Chesapeake, and being demanded by a British officer, were not given up, but withheld; application was made to the civil authority of the place for the men, all interference was declined; the case was represented to the president at Washington; he gave no satisfaction; the men were shipped on board the Chesapeake; they were once more demanded, and being refused, the ship was, without suspecting or being prepared for action, fired into, boarded, and the men taken away, without resistance.

The transaction is instantly resented by the people, from one end of the United States to the other, and from the Atlantic to the Lakes and the Mississippi, as fast as the account could travel. In Kentucky great sensation was produced, and the resentful resolutions of the Atlantic, promptly responded from the patriotic citizens of the west.

The president of the United States, no less animated by the aptness of the occurrence to promote his views, than by a due regard to the safety of the country, by proclamation, adapted to popular feeling, excluded the armed vessels of Great Britain from the waters of the United States. And this was certainly right for the time.

When, however, the British government came to a knowledge of the outrage which had been committed by the one ship upon the other, it was the first to communicate the intelligence to the American minister in London; and frankly disavowing the transaction, gave assurance of suitable reparation, as soon as the facts should be ascertained.

Intelligence of this being transmitted to Mr. Jefferson, he could but see that the inhibition of the waters of the United States to British ships, was no longer a measure of public safety; and that hence it degenerated into an act of revenge, or became an attempt to take compensation for the recent insult and injury which had produced the measure, and thus impaired the claim of public retribution from Great Britain. But this was not all the use which our magnanimous president

meant to make of the means in his hands: there were various points of difference of prior date still unsettled between the two governments; and when the affair of the Leopard and Chesapeake, being of a singular and isolated character, was proposed to be settled and recompensed at once, this was rendered impracticable, by the president's tacking that case to the rest, and insisting on the adjustment of the whole; which of course was not done: an event foreseen by thousands of less sagacity than Mr. Jefferson. And who could but concede, that the president equally foresaw it; and that by keeping the matter unsettled, it could not fail of irritating the people, and of preparing them for the conflict so ardently desired by Bonaparte; though not really by Mr. Jefferson, during his presidency. At length, however, under a new arrangement, the affair of the Chesapeake was detached from the other topics of controversy, and atoned for; without a very good grace on either side. But these are considerations foreign from this history, and cannot be pursued; the writer of which now hastens back to the more immediate occurrences in Kentucky.

To prepare the public mind for the measure contemplated as to Judge Innis, the numbers signed "A voice in the West," were written, and published, from the early part of October, to the latter part of December. As a specimen, and an introduction to the investigation, and demonstrations in the seven subsequent numbers, the first will be inserted; so also will the ninth, as an historical review of the time; while the rest must be omitted for the want of room.

No. I.—"TO THE PEOPLE OF KENTUCKY.

"A fellow citizen would address you on a subject of high national concern, he solicits your attention; he would animate your feelings, and recall you to a sense of your own and your country's wrongs; he states the obnoxious case; he would unite your wills, and give you a consentaneous impulse; he represents your common interest and united duty; he would excite your indignation; he shews you the clandestine intriguer and the perfidious public functionary; he would stimulate you to an act of public justice and necessary example, and he hopes to convince your judgments of the perfect propriety of the measure.

"Fellow citizens: I deem it fortunate that we people a free country, whose civil and religious rights are defended by the auspicious panoply of republican constitutions; and I sincerely felicitate you, that good fortune, combining with the precautions of wisdom and virtue, have hitherto preserved us as a link in the chain of American union. From these resources we may yet derive new light, life, and immortality. And might I be permitted to adopt the language, as well as the idea, of our holy religion, I would with an angel's voice inform you, that regeneration is essential to everlasting life; as man is prone to vice, so is a republic to intrigue, to faction, to anarchy, and to despotism, in which the republic becomes totally extinguished. The history of our own country, but yet a span long, exhibits to the attentive observer an unexampled series of base and perfidious machination and intrigue.

"While yet our constitutions were in embryo, the project was formed, by Kentucky citizens and Spanish subjects, to detach this country from the American union, and to connect it with the territories of Spain. Nor have all the manifold blessings of state and federal constitutions, under the most popular administrations, been able to quiet the restless spirit of intrigue, or to extirpate the monstrous hydra of treason. No: ambition is not satiated with success; nor is the gangrene of corruption eradicated by emollients. No: we want a government of vigilance and energy; we want a discriminating sense of right and wrong among the people; we want a delicate perception of national honour, and of official duty; we want a real love of country, and a detestation of traitors.

"Our country; the scene of criminal intrigue from the year 1788, has been the hotbed of conspiracy: it is a garden, where every foul and obnoxious weed has found a kindred soil.

"A Brown, a Wilkinson, a Sebastian, an Innis, and a Burr, have successively, or in conjunction, shed their baleful influence over it. They have intrigued with foreign agents; they have meditated disunion; they have propagated insurrection; they have machinated treason; while their influence and example have spread wide the contagion.

"At this moment our country is in a crisis: she is now about to receive her characteristic destination: it is now that Kentucky is to be spread out as an extensive and fertile plain, on which honest industry, "following her ten thousand avocations," is to achieve private riches, and national prosperity, under the banners of peace, law, and union; or, it is to be consecrated a bloody arena, and erected into an amphitheatre, wherein the perfidious Cataline, or ambitious Cæsar, is to exhibit the direful and agonizing drama of treason, of disunion, or conquest: For it is now, when the treachery is detected, that the perpetrator should be punished. Otherwise, the guilty person, brought full to the public eye, and looked on with lenity, takes courage, solicits forgiveness, claims indulgence, demands impunity. Impunity in such a case, is approbation. And when approbation is the traitor's crown, who will resist the allurements of treason?

"Our country, menaced without and agitated within, can only be saved from her enemies by an awakened sense of the danger, by vigilance, by activity, by attention to her diseases, and by a judicious and vigorous application of competent remedies. Every one must do his part; the whole people must act; THEIR REPRESENTATIVES MUST ACT.

"Yes, it is the representatives of the people who can alone exercise the powers of government. But it is well known that these representatives often require the impulse of popular excitement. And after the experience of 1806, this becomes the more obvious in 1807.

"Fellow citizens: Believing that the great mass of the people is yet sound, believing that the noxious malady of intrigue and disunion is yet lingering in the extremities of the body politic, I have presumed to exercise a right common to all—the right of publicly addressing you on a subject of public concern; and of treating you as a sick patient, possessing the means of your own cure; and as a strong man, into whose house a paltry thief has dared to enter. You, fellow citizens, have only to will, and you acquire health; you have only to act, and the culprit will be arraigned; you have only to speak, and his off-

cial existence will be annihilated. Exiled from power by the public voice, his example will become useful, his conduct infamous, and his future life contemptible. This has been the case with respect to JUDGE SEBASTIAN. And I shall proceed in successive numbers to shew you that JUDGE INNIS, having been his *associate in crime*, ought to be his *companion in punishment*.

"A VOICE IN THE WEST.

"October 15, 1807."

No. IX.—"TO THE PEOPLE OF KENTUCKY.

"*Fellow Citizens*: To pursue his honour Judge Innis, further than is necessary to expose his *crimes* and to shew his *utter unfitness* to hold the office of judge, is beneath the object of these numbers, as it would be unworthy the magnanimity of an independent and ingenuous mind.

Having therefore shewn him, in his *official capacity*, *weak and partial*; and in his *civil and political relations*, (while judge,) a *secret and clandestine* INTRIGUER WITH FOREIGN AGENTS; and having established these facts, upon the evidence of public records and his own oath, I can but view him as a public culprit, suspended at the awful tribunal of public justice, which in due time will be administered to him by a people sensible to the injury of their violated rights, and justly indignant at the perfidy of their public servant, the official conspirator, the clandestine intriguer for separate treaties and national dismemberment.

Noticing his honour, therefore, as I may his coadjutors, incidentally, in this and the following number, I persuade myself I shall not be thought improperly obstructive, but find the most abundant excuse in the importance of the subject, and in the magnitude of the crisis, for generalizing my ideas upon republican institutions, the utility of union, and the destructive effects of foreign intrigue.

The history of the *Kentucky Spanish conspiracy*, has, in several publications in the "Western World," been rapidly traced from Gardoqui and Brown, in 1788, up even to Burr's treason of 1806. The object has been the same—the means and the movements only different. In most, if not all, of these transactions, Judge Innis has been seen to act his part.

"In the fall of the year 1794, the treaty with England was made, and announced about March, 1795. No sooner was this event known in the United States, than all the anti-federalists, democratic societies, French partisans, and *Spanish conspirators*, united to defeat the treaty. It was discussed unseen, and condemned unheard, in this state and elsewhere. For it was clearly foreseen by the leaders of these factions, that the treaty, if ratified, would prevent a war with Britain, so ardently desired by them; and that our own federal government, freed from the controversy with England, would be able to resist with effect, both the French and the Spanish conspirators, intriguers and agents.

"In the state of Kentucky, the Spanish association, who had been sorely defeated by the adoption of the present federal constitution, was again in the utmost perplexity and agitation. They foresaw very clearly, if the treaty was ratified and carried into effect, that the general government, administered by Washington with a vigilant eye over every part of the union, and freed from the embarrassment of a contest with Britain, would be able to defeat their schemes of disunion. Therefore the utmost clamour was raised against the treaty, and against the only person from this state, who voted for its ratification.

"Even after the treaty was ratified, the most violent attempts were made to prevent its execution; and no wonder; for at this time, 1795-6, Judge Innis, Sebastian, and others, were carrying on their traitorous intrigue with Gayozo, for a separate treaty—that is, *dismemberment of the union*; notwithstanding the president of the United States was then in treaty with Spain for the navigation of the Mississippi; and notwithstanding he had been at the extraordinary pains of sending a special agent to this state a short time before, to satisfy the people of his honest endeavours to obtain for them this important navigation.

"Yes, fellow citizens, under these circumstances, a secret and a traitorous conspiracy was formed and carried on by men among us, high in office—men who call themselves republican citizens—men who were sworn to support the constitution of

the United States—even Judge Innis and Sebastian, with the agents of the Spanish monarchy—for the nefarious purpose of a separate treaty; and which could have taken effect only upon the basis of separating the *Western* from the *Atlantic people*. The execution of this measure was however prevented, by the timely arrival of the public treaty made between the government of the United States and that of Spain. And but for the intrigues of these *Spanish conspirators*, this treaty would have been much sooner made. And you, fellow citizens, would long before that time, have been secure of a place of deposite for your produce at Orleans, but for these secret and dishonourable attempts of Innis, Sebastian, and Co. For it is a fact well attested, that as early as 1788, the Spanish government, by means of its minister and governor, had begun to tamper with *Congress Brown* and General Wilkinson, upon the subject of separating this country from the union. And from the opinions inspired by these men and their associates, Spain was taught to believe, that if she refused a public treaty to our government on the subject of navigating the Mississippi, and offered it privately to her *hirelings* and *emissaries* here, she would be able to effect disunion, and to attach this western country to her Louisiana territory. Therefore it was that Spain refused to treat with our government on the subject of this navigation. Therefore it was, that she had her Sebastian, Innis, &c. in this country. Therefore it was she sent her confidential and loving letters to these men.

“In the mean time the differences between England and the United States, favoured the views of Spain, as well as those of our traitorous citizens, when the accommodation with England cut off the hopes of both parties for a time, and produced the treaty of amity, limits, and navigation, which terminated Sebastian’s embassy, with a pension from his Catholic Majesty; looking forward still to a dismemberment of the union. Accordingly, in 1797, the project was avowed to his majesty’s pensionary, Sebastian; who straightway convokes his friends, Innis, &c.; ‘and once more sits in conclave the treacherous divan.’ But the times were inauspicious to their purpose, and they put off

the great affair of *dismembering the union*, with "civil answer," which they kept to themselves, as they did the proposal. Faithful judges!!! Honest citizens!!! True patriots!!! Innis, Sebastian, and company. And here I can but regret that the committee of the house of representatives, did not call forth the formal treaty which had been drawn up between Gayozo and Sebastian, and indeed that they omitted many other documents of important and useful information, which the occasion well warranted their calling for; and a full development of the various intrigues, to which we have been exposed, loudly demanded. But it seemed as if that committee were rendered dizzy, by the dark and profound abyss into which they had peeped; and from which they appear to have withdrawn with equal alarm and precipitation. The guilt of Sebastian, the peculiar object of inquiry, was indeed so forced on them, that they could not avoid seeing it, painted in all its enormity: and although it *pained the weak eyes of some sympathizing friends*, yet the vote was almost unanimous in the following result:

"Whereupon your committee does not hesitate to declare as their opinion that the information given to the house of representatives, is substantially true, and correctly detailed; and that the said Judge Sebastian is guilty of having for several years received from the Spanish government a pension paid in cash annually to the amount of two thousand dollars.

"Your committee further report as their opinion, that whilst Judge Sebastian was in the exercise of his office in this state, and drawing his annual salary therefrom, he was employed in carrying on with the agents of the Spanish government, an illicit, unjustifiable, and highly criminal intercourse, subversive of every duty he owed to the constituted authorities of our country, and highly derogatory to the character of Kentucky."

"Thus we find our representatives in the last assembly, expressing themselves as to Judge Sebastian, the coadjutor, the agent of Innis. What would they have said as to Innis, the employer of Sebastian, had he been fully and fairly before them? They could not have said less than, 'that Judge Innis, while he was in the exercise of his office under the general go-



vernment, and drawing his annual salary therefrom, was engaged in carrying on, through the means of Sebastian, with the agents of the Spanish government, an illicit, unjustifiable, and highly criminal intercourse, subversive of every duty he owed to the constituted authorities of our country, and highly derogatory to the character of Kentucky and of the United States. Less than this, they could not possibly have said. They would have expelled Sebastian, had he not eluded their just sentence by a premature resignation of his office. And what would they have done with Innis, had he been within the scope of their jurisdiction? They must have expelled him also—they could not have done less. But he belongs to the federal government; he was not in their power; he holds the high, the honourable, the sacred office of judge, and usurped that part of our government, which is particularly charged with our foreign relations, committed to the president, and *which he had sworn to support*; but which in fact, he had been sapping and subverting, by consenting to, and fostering intriguers, and an intercourse which is declared to be *illicit, unjustifiable and highly criminal, in a state judge*; then how much more so in a federal judge?

"Yet to the inexpressible disgrace of our country—and what shall I say of our virtuous republican representatives in congress—no notice was taken of Judge Innis; although the report of the committee containing the evidence against him, was transmitted by order of the house, no attempt was made to impeach him; but, after repeated and accumulated acts of perfidy to his country, he has been permitted to hold his office, and to restamp upon the character of Kentucky, the indelible stain, of cherishing and supporting a *Spanish conspirator* openly detected in his guilt.

"A fact of this nature, so notorious—an instance of apathy and indifference as to public morals and judicial character, on the part of congressional representatives, so manifest, must give to the mind of reflection the most awful and alarming apprehensions, for *real republican* principles, for the existence of union, and for liberty itself.

"Fellow citizens: In vain shall *republic* and *republican* be sounded in your ears; in vain shall your leaders assert to you that they are friends to liberty and to union, while they cherish and support in office, a judge who has betrayed his integrity, as a judicial functionary of the federal constitution, by descending to the base and disorganizing machination of intriguer with the agents of a foreign monarchy. For what are such intrigues carried on? Are they for public good? No, for private emolument. Have we not an organized government? Have we not a president to whom we have entrusted our foreign intercourse—our treaty-making power? Yes: and this president has the senate as his counsel, and is amenable for his conduct. Shall private citizens then, or what is worse, shall a judge acting under this system and expressly sworn to support this constitution, arrogate to himself, the delicate, the intricate, the important rights of foreign intercourse, or the treaty-making power? And shall this judge, either directly, or indirectly hold illicit and clandestine correspondence with foreign agents? And will the people, and representatives of the people, connive at or justify this? Let this be known and established, and it may be predicted with certainty, that public virtue, with private morals, are gone; the fundamental principle of the republic is corrupted—and that neither *union* nor *liberty* can long survive.

"In vain shall we rail at the corruption of old governments; in vain shall we accuse others with our own crimes, when the guilt is manifest, and the culprit honoured.

"For what does foreign nations send their gold among us, and for what do they pension our citizens? Is it to serve the people of this country, or is it to serve themselves? Can you doubt, can you hesitate to say which? No, it is impossible you should. Look back to last year, and recollect the scenes that passed in your presence, and before your own eyes, when Sebastian, Innis, Brown, and others, were implicated as Spanish associates or conspirators—what anger, what violence, what high-toned resentment, what a spirit of persecution and revenge was excited among them and their adherents, against the editor of the *Western World*, (the paper in which they

were arraigned) and against those who countenanced its publications. Sebastian was charged with receiving a Spanish pension, it was denied. Your Judges Todd and Innis knew the fact, they concealed it—it was proved on him, and there the investigation dropped. In the mean time a book had been written under their patronage to justify their conduct, and to prove them good republican patriots: and the whole effort of the *conspiracy* has been to palliate, to excuse, and to obliterate the remembrance of those transactions. Observe their conduct; see their tools and agents; how they coalesced with Burr.

“And will the people of this country, the honest farmer, the laborious planter, the industrious mechanic, and various classes of well meaning, but deluded citizens, yield themselves up the ready slaves and willing victims of intriguers and traitors? Or have they spirit, and are they capable of one manly effort to recover the fallen character of their country? In the present crisis, example is every thing. The question is, Shall the self-convicted conspirator receive reward, or punishment?

“A VOICE IN THE WEST.

“November 13, 1807.”

It is a measure worthy of notice, that on the recommendation of the president, the act of congress laying an embargo passed at the session of this year: and that Mr. Jefferson made it known he should not be a candidate the fourth time for the presidency; his second term of service approaching the period when such things were to become the subject of conversation.

The legislature of Kentucky assembled late in December, in virtue of a special law for the purpose; while the governor, in his communications, notices, that it is the last time of his official appearance among the members.

General Wilkinson, on various charges of misdemeanor, was consigned to a court of inquiry; which after much proved, and more said, labouring under a lack of perceiving his guilt, like the Kentucky jury in the case of Colonel Burr, acquitted him, with eclat: and he was continued in commission.

There is another detached fact which fell into the year 1807, and might have been sooner mentioned, but regarding its influence, is not finally to be omitted—it is the appointment

of the honourable Thomas Todd, whose name has appeared at intervals in this history, the *protegee* and brother-in-law of Harry Innis, to a seat in the supreme court of the United States. It was undoubtedly owing to the merit which these gentlemen acquired by means of the developments of 1806, in the eyes of president Jefferson, that Kentucky was so highly favoured—and especially to his affectionate regard for the elder of the two, whom he could almost say, “was a man after his own heart,” and who stood in need of a faithful friend, to countenance, and support him in office. But Mr. Jefferson, knew the loyalty of the people of this state, and he acted accordingly.

[1808.] In January, Mr. Marshall read in his place, and laid on the clerk’s table, the preamble and resolutions following, to wit: .

“Inasmuch as it has frequently been thought expedient to express the public opinion on subjects of general concern, as the means of union and confidence among members of the same community, or as indications of public will, serving for guides to public servants, in their official conduct: And inasmuch as *Harry Innis, Esquire*, (as recently developed,) while sole judge of the federal court, in this state, has in several instances, and especially in the case of *Lachaise*, a French emissary—and in the case of the *Baron Carondelet*, and in the case of *Thomas Power*, agents and emissaries of the king of Spain—been privy to, or concerned in secret and clandestine negotiations or intrigues carried on by those agents and emissaries with citizens of this state, participating in their views of compromising the peace or dismembering the union of the American states, without using any means to prevent or detect the secret machinations of those agents and emissaries; but on the contrary the said Harry Innis connived at, participated with, or encouraged them, in violation of that faith and allegiance by which he was bound as a citizen; and more especially as a judge, both by his public duty, and by his solemn oath, ‘to support the constitution of the United States,’ which confides the rights of peace and war to the congress, and the treaty making power with

other arrangements of our foreign relations, to the president and senate of the United States: and these circumstances in the conduct of the said Harry Innis, furnishing an occasion of sufficient magnitude to interest the attention of the representatives of the Kentucky people, and to call forth the public expression of their opinion: Therefore,

*Resolved by the Senate and House of Representatives, That the conduct of the said Harry Innis, while sole judge of the United States' court in this state, relative to the said Lachaise, Carondelet, and Power, whose objects were to violate the peace, or dismember the union, has been secret, clandestine, and illicit, incompatible with his allegiance as a citizen, his fidelity as a judge, and his oath to support the constitution of the United States; of bad example, and of dangerous tendency, calculated to embarrass and impede the rightful operations of the national government, to encourage intrigue and outrage on the part of foreign governments, and domestic traitors—and finally, to involve the United States in war, or to sever the union, by means of bribery, corruption and force: whereby, the said Harry Innis, in rendering himself justly suspected of infidelity to his own government, is unworthy of a seat in the judiciary.*

*“And resolved, That an inquiry ought to be instituted by the constituted authorities, into the conduct of the said Judge Innis, to which he may answer, and on which judgment may be pronounced.*

*“And also resolved, That the governor be requested to transmit a copy of the foregoing resolutions to each of the representatives of this state, in the congress of the United States.”*

These probably had not been committed, when the judge addressed a letter to the speaker, which was laid before the house, and read in the following words, viz:

*“January 29th, 1808.*

*“SIR: I have been informed, though unofficially, that certain resolutions have been presented to the house of representatives in which you preside, implicating my conduct and integrity as judge of the court of the United States, for the Kentucky dis-*

strict. Having supposed myself immediately responsible to the general government, from whom I hold that appointment, I did during the last session of congress write to several members of that body, requesting through them, that an inquiry might be made into my conduct. From this however they dissuaded me, because in their judgment there was no sufficient ground to justify or authorize such inquiry.

Conscious, however, of my own innocence of any criminal intention, or acts, and that in spite of all the malevolence of my enemies, upon a free examination, my life would only manifest errors of the head and not of the heart, nothing is more desired by me than an investigation into my conduct, governed by temper, moderation and justice. The result of which investigation (to which I invite your honourable body) will be as honourable to me, as mortifying to those who prosecute me.

(Signed) "HARRY INNIS."

The reading over, the letter, preamble and resolutions, were ordered to a committee of the whole house. They were afterwards discussed on several successive days; Mr. Marshall supporting his motion for adopting the preamble and resolutions offered by himself; Mr. Speaker Clay, in opposition to those, and in support of others, offered by him, as a substitute, in the following words, viz:

"Whereas the general assembly did, at their last session, order transcripts of the evidence taken before the committee appointed to examine into the conduct of Benjamin Sebastian, to be transmitted to the president of the United States, and to the senators and representatives from this state in congress; and as the present assembly has entire confidence in the general administration and in the congress of the United States, among whose duties is that of arraigning the public officer or private citizen, who may have violated the constitution or laws of the union: and whereas, the legitimate objects which call for the attention of this legislature are themselves sufficiently important to require the exercise of all their wisdom and time,

without engaging in pursuit of others, thereby consuming the public treasure and the time of the representatives of the people, in investigating subjects not strictly within the sphere of their duty: and inasmuch as the expression of an opinion by the general assembly, upon the guilt or innocence of Harry Innis, Esq. in relation to certain charges made against him, would be a prejudication of his case—if in one way, would fix an indelible stigma upon the character of the judge, without the forms of trial, or judicial proceeding; and if in the other, might embarrass and prevent a free and full investigation into those charges: Wherefore,

*“Resolved by the General Assembly, That it is improper in them to prescribe to congress any course to be taken by that body in relation to the said charges, or to indicate any opinion upon their truth or falsehood.*

*“Resolved, That the constitution and laws of the land, securing to each citizen, whether in or out of office, a fair and impartial trial, whether by impeachment or at common law, the example of a legislative body, before the commencement of any prosecution, expressing an opinion upon the guilt or innocence of an implicated individual, would tend to subvert the fundamental principles of justice.”*

These being put to the vote, were negatived. But it would have been too great a concession, to such a *federalist* as Marshall, and who, within the rules of decorum, had made quite free with the honourable judge, yet a precious member to his party, to have adopted the resolutions with the preamble as proposed by him: while, nevertheless, they were supported by such irrefragable proofs, as not to be rejected: they were therefore paraphrased, by Mr. William Blackburn, and offered in the following terms, to wit:

*“Inasmuch as it has been deemed expedient to express the public opinion on subjects of general concern, as the means of union among members of the same community, or as indications of the public will, serving as guides to public servants in*

their official conduct; and whereas from representations made to the general assembly by the introduction of a resolution, and upon the application of Harry Innis, Esq. by letter directed to the speaker of the house of representatives and by him laid before that house praying an examination into the charges exhibited against him in said resolution, and from evidence to them exhibited, it appears that the said Harry Innis, Esq. while sole judge of the federal court for the Kentucky district had knowledge of various intrigues and secret negotiations having been at different times carried on by the agents and emissaries of a foreign government with citizens of this state, hostile to the peace and tranquillity of the union; particularly in the case of the Baron de Carondelet, and in the case of Thomas Power, agents and emissaries of the king of Spain: and the said Harry Innis, Esq. possessing a complete knowledge of propositions having been made to himself and others, citizens of the western country, by the said Carondelet and Power, which had for their object the dismemberment of the union; and having failed to communicate to the federal executive or to take any measures of prevention, as by the duties of his office he was bound to do; and the conduct of the said Harry Innis, Esq. in this particular having been such as to excite great public discontent, and a suspicion that he participated in the intrigues and secret negotiations aforesaid:

"The legislature deem those circumstances in the conduct of the said Harry Innis, Esq. as furnishing an occasion of sufficient magnitude to interest the attention of the representatives of the people of Kentucky, and to call forth the expression of their opinion. Therefore,

*"Resolved by the Senate and House of Representatives, That the conduct of the said Harry Innis, Esq. relative to the secret negotiations of the said Carondelet and Power, ought to be inquired into by the constituted authorities of the United States.*

*"Also resolved, That the governor of this state be requested to transmit a copy of the foregoing resolutions to each of the representatives of this state in the congress of the United States."*



Mr. Marshall, regardless of the variance, as the substance was retained, made no objection to this as a substitute: the vote was taken, it adopted, and finally passed: leaving it to be inferred, that whatever errors had troubled the head of the judge, his heart had participated largely in the most culpable of them. In vain, however, did the senate concur, except that in form, the character of the state, though tardily, if not reluctantly, was vindicated from a participation in Judge Innis' crimes, by open connivance, or tacit approbation. One circumstance is very remarkable: the preamble to the resolutions which were adopted, omitted to include in the censure, the intrigue of *Lachaise*, the French emissary; and of course, the knowledge and concealment of it by the judge. As to any ulterior measures, however, it all amounted to the same thing. The grand magician had stretched out his wand, over the head of the judge; on it was inscribed, "AN ENEMY TO THE FEDERAL GOVERNMENT—HE HAS BEEN FAITHFUL TO ME:" and impunity was ensured, while all further inquiry was abandoned. And such is the magic spirit of the party, that the country continues to adore the head, and kiss the hand which disgraced it then; and whose opinions still continue to distract its people, and add new embarrassments to their condition. Verifying an eternal truth, that every departure from truth and honesty, which lead to happiness, is an approach to falsehood and dishonesty, unfailling causes of social and individual misery.

Judge Innis, as he retained his office, is thought of sufficient importance to justify the mention of the fact, sued Humphrey Marshall, for publishing of him, "that he was a weak and partial judge, an enemy to his government, and one whom he ranked with a Sebastian, a Blount, and an Arnold." And such was his reliance upon the countenance and support of party, that it must be supposed he expected to get a verdict in his favour: his damages were laid at many thousand dollars. A trial at length was had; which occupied ten or twelve days, and terminated in a divided jury: in which it was understood, there were five for finding something for the judge, were it but a cent; the others said, No, not a cent. The case afterwards went off, each party paying his own costs.

The acts of this session will next be attended to, as far as it may be deemed expedient.

A new county was erected, to have effect from and after the first day of April, 1808, to be called ESTILL. "Beginning at the mouth of Drowning creek, thence up the same to the Red lick; from thence to the line of Clay county, at the head of the Horse Lick creek; thence with the same line to the Kentucky river; thence up the same to the Clarke and Montgomery county line; thence with the same to Red river; thence down Red river to the Kentucky; and up the same to the beginning."

"An act fixing the ratio, and apportioning the representation for the next four years," fixed the first at seven hundred qualified voters, and the last at seventy representatives, for the whole state; distributed as follows, viz:

"From the county of Adair, one representative; from the county of Barren, two; from the counties of Boone and Gallatin, one; from the county of Bracken, one; from the county of Breckenridge, one; from the county of Bullitt, one; from the county of Bourbon, three; from the counties of Campbell and Pendleton, one; from the county of Cumberland, one; from the county of Clarke, two; from the county of Casey, one; from the county of Christian, two; from the counties of Clay and Floyd, one; from the county of Fleming, two; from the county of Franklin, one; from the county of Fayette, three; from the county of Garrard, two; from the county of Greene, one; from the counties of Greenup and Lewis, one; from the counties of Henderson and Hopkins, one; from the county of Henry, one; from the county of Hardin, two; from the county of Harrison, one; from the county of Jefferson, two; from the county of Jessamine, one; from the county of Knox, one; from the county of Logan, two; from the county of Livingston, one; from the county of Lincoln, two; from the county of Madison, three; from the county of Montgomery, two; from the county of Mason, two; from the county of Mercer, two; from the county of Muhlenberg, one; from the county of Nelson, three; from the county of Nicholas, one; from the county of Ohio, one;

from the county of Pulaski, one; from the county of Shelby, three; from the county of Scott, two; from the county of Woodford, two; from the county of Wayne, one; from the county of Washington, two; from the county of Warren, two."

The Paris Library company was incorporated.

An act to prohibit the reading reports of cases decided in Great Britain since the 4th of July, 1776, *as authority* in the courts, passed at this session.

It having been enacted, 1806, that the annual meeting of the general assembly should be on the fourth Monday of December, an act was passed to repeal that, and to fix on the second Monday in the same month, for its annual meeting.

An act of this session, limited the time within which coloured people claiming their freedom, under Pennsylvania or Virginia laws, to two years from the passage of the act: providing for renewal in case of nonsuit, &c.

The court of appeals were authorized to procure reports of their decisions, where they were thought useful, and to certify what would be a reasonable allowance to be paid for them.

"An act to prevent the future migration of free negroes and mulattoes to this state," was the offspring of this year.

The act was to operate on all persons of the above description, who should come into the state after the first of May, 1808. Jurisdiction was given to arrest such persons, to require each to enter into recognisance of five hundred dollars, to appear at the next county court, and in case of failure, to commit the delinquent until court: the court to examine, and if they find the party has come contrary to the law, they are to require recognisance in five hundred dollars, conditioned to depart the state within twenty days, never more to return. In each case of a recognisance, one or more good securifies were required: that is to say, an impossibility. Who would be security for a poor outcast—a stranger—an exile? But such is the fate of men not represented in a majority of law makers, often regardless of the rights of others, and even of the first principles of humanity.

These were acknowledged free people—disregarding both age and sex. What then, is it to be a free man? And how

does this act of proscription comport with christian principles? with those which permit emancipation? or which estimate men according to their moral habits, and impute to each, without regard to complexion, innocence, until guilt is made appear?

Civil proceedings in court were regulated: the clerks ordered to set the chancery causes at the end of the common law docket; and this operation being performed previous to every term, successively gave every new common law case, whatever its insignificance, a constant preference of the chancery cases, be their age or importance whatever they might. But if the court had nothing else to do, they might try a suit in chancery.

It had been doubted whether justices of the peace could take jurisdiction of balances due on bonds or notes, for larger sums, where the balance was reduced to less than five pounds. An act of this year settled the doubt in favour of the jurisdiction.

A hemp mill company in Madison county, was incorporated. The preamble recites that a company had been formed for the purpose of spinning hemp and flax by machinery moved by water, that they met with many difficulties in the execution of the project, and prayed to be incorporated, as a means of relief. It is however believed, that if there is not a radical defect in the plan, the corporate powers of the company, have not been able to ensure it success: money and good management might.

There were about one dozen divorces authorized by acts of this session—for the usual complaints, desertion, &c.

Various other species of relief, apparently upon less justifiable grounds, and without a jury to find the facts, as in divorce cases, were granted by acts of this session.

In order to avoid the inconvenience of an empty treasury should the fact occur, as sometimes it did, the bank was authorized to take up audited warrants, to charge six per cent on the amount; which the treasurer was required to liquidate, and withdraw, as fast as money came to his hands. Thus was public credit preserved, in a way agreeable to all parties, and as it is believed, perfectly constitutional; whatever may be said of its economy. It being much doubted whether an agricultural community, can with any more propriety pay six per cent

upon its revenue for annual expenditure, than the farmers of the lands can pay a like interest upon money to keep up their farms.

The revenue upon the turn of the year, is not thought to have been very deficient—the auditor's warrants of this year, are stated at one hundred and ninety-nine thousand, some hundred dollars—the receipts of revenue not seen.

CHAP. XI.

*James Madison offers for the Presidency—Charles Scott chosen Governor—number of Militia—Legislative proceedings—Mr. Madison elected President—affairs of the United States involved in difficulties—seizure on part of West Florida—non-intercourse—Commodore Rogers attacks the Little Belt—Madisonian project for liberating commerce from British orders, and French decrees; which terminates in war, with the assistance of General Harrison, and a Kentucky intrigue—intervening Legislative proceedings, &c. &c.*

[1808.] It was announced as early as February of this year, that James Madison, a citizen rendered illustrious by his various displays of talents and patriotism, was a candidate for the office of president of the United States. An opposition from Mr. Monroe, another citizen, also highly distinguished, was for some time apprehended: but it is believed, the rivals, who had manifested some feeling towards each other, were reconciled by means of Mr. Jefferson, their common friend; all Virginians.

A governor for Kentucky, was to be elected at the ensuing August polls. The candidates were, General Charles Scott, and John Allin, Esquire, whose names have been mentioned in this history. In point of qualification, and political fitness, of the two, had it not been for a suspicion, imbibed from Mr. Allin's conduct in relation to Sebastian and Burr, there should have been no doubt of Mr. Allin's superiority.

A more amiable man has rarely lived—while it is believed, his very amiability misled him. With Sebastian, he had been in habits of intimacy; as he had with Judge Innis, and with General Adair: with Colonel Burr, it is thought, his intercourse was but very slight. No candid man of intelligence, thought him participant with either. But if he could not, or would not, see the offences of those against whom so much appeared, he was clearly unfit to be governor; nevertheless, he received a large suffrage; but the majority of General

Scott, was greater than the whole number of Mr. Allin's votes. Yet, nothing decisive is to be inferred, as to the predominant consideration, however desirable to the politician, who would speculate upon the inducements which influence popular elections, from the result of this: General Scott had the reputation of military service in all the wars of the preceding half century, and military merit had ever been decisive with the people of Kentucky.

The number of organized militia, mustered in the state, and reported to the general government, appeared to be thirty one thousand, two hundred and thirty-six.

The legislature assembled in December; and the governor, having first chosen his son-in-law, Jesse Bledsoe, secretary; as usual, made communications. The intention once entertained, of giving the first communication of the kind, is necessarily relinquished, for want of room: a very concise review must in this case suffice.

The customary acknowledgments to the people are ample—"the public good," laid down in so many words, to be the great object of pursuit.

Reference is made to the existing crisis, as likely to call out the energies of the country, alluding to the foreign relations of the United States; then it is suggested, that the way to avoid force is to be in a situation to repel it, says "the wanton and continued violation of our plainest rights by both Great Britain and France, who appear determined to sacrifice them, alternately, as convenience or resentment in their mutual and destructive conflicts for empire may suggest, seems to leave us but one alternative, either to submit to be the passive instruments of their pleasure at the expense of all we hold dear, or to make that resistance which the God of nature has put in our power." Represents the militia on parade days, as appearing frequently with guns without locks, and worse than this, with a mere apology for weapons. He then recommends the manufacture of arms among ourselves; and adverts to the requisition of 5005—made by the president from this state, as her quota of 100,000 militia ordered to be held in readiness.

Home manufactures, the standing topic, is touched on, and recommended.

He adds: "It will be with you, gentlemen, to say, whether from the present posture of our affairs and the privations I have noticed, it will not be just and politic to give debtors some respite by prolonging the time for replevy," &c. The revenue is recommended to attention. The senate is told that it is expected to assist the governor in *selecting* proper persons to fill public offices—a rapid survey is again taken of the state of affairs, with a view to war, and a retrospect of '76, and the former contest—with the appropriate conclusion, "that we must prevail."

Late in December the governor addressed the militia, with a view to procure volunteers, to fill the presidential requisition of this state's quota, in preference to a regular detachment, called a draft; while great merit was ascribed to volunteer service; and by consequence, demerit was reflected on those who did not turn out.

A course, as impolitic as it was unjust; since a deviation from the law, is ever the parent of disorder.

About the same time, resolutions approbatory of the course pursued by the government of the United States, were offered, by a member, to the Kentucky house of representatives: these were superseded by others, preferred by H. Clay, which read as follows, viz:

*"Resolved,* That the administration of the general government since Thomas Jefferson has been elected to the office of president, has been wise, dignified and patriotic, and merits the approbation of the country.

*"Resolved,* That the embargo was a measure highly judicious, and the only honourable expedient to avoid war—whilst its direct tendency, besides annoying those who had rendered resort to it necessary, was to preserve our seamen and property, exposed to the piratical depredations of foreign vessels.

*"Resolved,* That the general assembly of Kentucky would view with the utmost horror a proposition in any shape, to submit to the tributary exactions of Great Britain, as attempted to



be enforced by her orders of council, or to acquiesce in the violation of neutral rights as menaced by the French decrees; and they pledge themselves to the general government to spend, if necessary, the last shilling, and to exhaust the last drop of blood, in resisting these aggressions.

*Resolved*, That whether war, a total non-intercourse, or a more rigid execution of the embargo system, be determined on, the general assembly, however they may regret the privations consequent on the occasion, will cordially approve and co-operate in enforcing the measure; for they are sensible, that in the present crisis of the nation, the alternatives are, a surrender of liberty and independence, or, a *bold and manly* resistance.

*Resolved*, That Thomas Jefferson is entitled to the thanks of his country for the ability, uprightness and intelligence which he has displayed in the management, both of our foreign relations and domestic concerns.

*Resolved*, That a copy of the foregoing resolutions be transmitted to the president of the United States, and to each of our senators and representatives in congress."

As a substitute for the foregoing, H. Marshall presented the following, to wit:

"1st. *Resolved*, That all independent governments are respectively equal in their sovereign capacity, and necessarily possessed of certain rights and privileges, among which is the right of navigating the high seas and of selecting the ports of destination for their ships, subject only to the established law of nations, and which none can abandon, without an abdication of that independence.

2d. That war is an evil, and never to be entered into for slight and transitory causes, nor until after a resort to pacific propositions, for the reparation of wrongs and for the adjustment of differences, has failed of its desired effect.

"3d. That the United States of America have for several years experienced from the governments of Great Britain and of France, repeated usurpations on their sovereignty and independence, and manifold injuries to their rights of navigation and commerce; and that, having, in the spirit of amicable

negotiation, employed in vain and exhausted the means of friendly adjustment, without obtaining from either of those governments the reparations due to their just claims for past injury, imposing in the mean time on themselves a rigorous embargo, the better to avoid new causes of irritation and of conflict, it now remains only, for these states, to continue this self-immolating restriction on their rights, submit their commerce and navigation, unarmed, to the insults and depredations of the unfriendly belligerents; or, authorizing the armament of merchant ships and their convoys, and disclaiming all intercourse with the aforesaid belligerents, so long as they continue their unjust decrees, orders, or aggressions, assert their national independence, *with the spirit of freemen*, in the practical exercise of their undoubted rights of navigation and commerce. In this choice of difficulties, difficulties insuperable to the eye of despondence and to the heart of timidity, there is one course open to honour and to patriotism; it is worthy the American character, it is suitable to the rights and to the dignity of a sovereign and independent nation: it is, to resume the practical exercise of those just rights of navigation and of commerce, which have been suspended, to the universal distress of the nation, and to defend them with all the energies of a people determined to be *free and independent*.

"4th. *Resolved*, That the act of congress laying an embargo, and the supplements thereto, ought to be repealed with all practical despatch—that the commerce of the United States with friendly nations ought to be regulated, and her *bona fide* citizens authorized to arm their ships, and to sail under convoy for defence and protection on their lawful voyages; abstaining from all intercourse with France and England so long as they shall respectively continue their decrees, orders or aggressions; with the public avowal and national pledge on the part of the United States, that a resort to actual force by either not authorized by the established law of nations, will be held and treated as a declaration of war against the United States.

"5th. *Resolved*, That the general government may rely on the support of this commonwealth in the foregoing, and such

other measures as may be deemed necessary and proper to protect the rights of the citizen, and maintain the honour and independence of the nation."

The vote being taken by yeas and nays, upon these as an amendment to those offered by Mr. Clay, the result was sixty-four nays, one yea: Mr. Marshall being the only person who voted for his resolutions. Mr. Clay's were then carried by the same majority.

The course rejected, will be seen, to propose the assertion of the United States' right to maritime commerce—and being impartial as to France and England, might as readily lead to peace or war with the one as the other. Things utterly repugnant to the first principles of Jeffersonian policy, now devolved on the care and management of President Madison.

In the state legislature—The first act to be noticed, is one authorizing the county court to establish inspections of tobacco, flour and hemp, in their counties respectively. Heretofore this power of establishing inspections, had been deemed a legislative power: Could it be transferred by the legislature to the county courts? In what capacity do they act, in its execution? are they judicial, executive, legislative, or administrative only? The same question may be asked, as to many other things committed to the county courts. How far constitutional? is a question of no trifling import; but not now to be investigated.

"An act regulating divorces in this commonwealth," is the production of this session. This act was important for two reasons: it restored to the judicial department, a power which had sometimes been exercised by the legislature in particular cases, although judicial, as it affected a contract; and besides, its taking up much time, it was always acted on *ex parte*, and without any fixed rule;—this act gave rules, by enacting, that "the several circuit courts in this commonwealth shall have jurisdiction, to decree divorces in the manner hereafter mentioned, that is to say—in favour of a husband, where his wife shall have voluntarily left his bed and board with intention of abandonment, for the space of three years, or where she shall have abandoned him and lived in adultery with another man or

men, or shall have been condemned as a felon in any court of record within the United States; in favour of a wife where her husband shall have left her with the intention of abandonment, for the space of two years; or where he shall have abandoned her and lived in adultery with another woman; or other women, or shall have been condemned as a felon in any court of record within the United States, or where his treatment to her is so cruel, barbarous, and inhuman, as actually to endanger her life."

Other provisions were made to effectuate these—with the further precaution, that the offending party should not be at liberty to marry again, nor released from the pains and penalties of persons entering into a second marriage, during the life of the first wife, or husband.

Livingston county was divided, and the new county named CALDWELL, was to take place from and after the first day of May, 1809.—"Beginning on the Tradewater river, at Owen's ford; running from thence a straight line to the forks of Livingston's creek, next below the Sycamore lick; thence down the same with its meanders to the mouth thereof; thence southwest to the Tennessee state line; thence east with the said line to the line of Christian county; thence with the same to Tradewater river; thence down the same to the beginning."

The following title, shews the object of "An act to repeal so much of every act as authorizes public remuneration for losses by fire in warehouses;" and nothing more need be said on the subject.

"An act to amend the several acts concerning the proceedings in chancery," directs, that the law which required chancery causes to be placed on the docket after those at law, shall be repealed, and enacts, that in future the suits in chancery shall be set to no particular day—but that the court may act upon them any day in the term. This law, however flattering to the most important suits in general, as they were either for an adjustment of titles to land, or else enjoining the payment of money for which there was a judgment at law, which had been for a time cast into the rear, and seldom called; yet in reality

but, little improved their condition; for having "no day in court," they had no right to claim a hearing, and were but seldom heard, however urgent might be their cases. It would not be extravagant to say, that there are suits on docket, which have been transferred from one generation to another; and after having been passed from lawyer to lawyer, for ten, twelve, or fifteen years, there is not one at the bar, or in court, who knows any thing of their merits or demerits, except the clerks: they know, that they charge three fees annually for continuances; and that hence, to them, they have the virtue of perennial springs of gain.

The Newcastle library, was incorporated.

White males were exempted from paying county levies, prior to full age.

The general assembly were to meet in future the first Monday in December, instead of November.

The auditor of public accounts was authorized to exchange the cut silver received for revenue, with the bank, at a discount not exceeding three per cent, for small round coins: and the public collectors were to lose three per cent on cut money, unless they would each swear that he had received the same in making his collections.

At the last session, an act passed, prohibiting free persons of colour removing into the state: at this session it appearing that many free mulattoes had violated the law, it was repealed as to them, and their connexions not yet arrived in the state; provided they came before Christmas, 1809.

"An act for the *relief* of debtors," passed at this session, authorizes a replevy of one year, upon giving bond and security on or before the day of sale under execution, to pay within the year: but if the defendant fails to give the bond and security, then the estate to be sold on one year's credit, the purchaser, or purchasers, to give bond with security, to have the effect of a judgment, and rendered assignable.

The next act deemed worthy of notice, is one to "compel the speedy adjustment of land claims." This act presenting to view the complicated state of claims to lands, proposes to

remedy the evil, by limiting the right of bringing suit, whereby to recover the possession of land from any one then in possession under title in law or equity, to the 1st day of January, 1816: and as to those who should settle upon land, having such title as aforesaid, after the passage of the act, the suit was to be commenced within seven years next after the settlement should be made. This act, as it abridged the time for bringing suits in cases where the laws of Virginia adopted in Kentucky had allowed much longer periods, to claimants out of possession, was thought by some to be a violation of the compact with Virginia. It is believed, nevertheless, to be defensible, upon a fair construction of that compact, on the same principles which will justify the first occupying claimant law; and to which reference is made. For the present, it will suffice to observe, that the court of appeals have sustained both acts—while the circuit court of the United States sitting in Kentucky, has been understood to have decided against the limitation act, as the supreme court had against the occupying claimant law; as being against the compact of separation, therefore unconstitutional and void.

An act of this session, repealed all laws establishing examining courts in criminal cases; and thence proceed to vest the like jurisdiction in two justices of the peace; who may sit any where.

The title of "An act to coerce the payment of arrearages from the several delinquent collectors of public dues," sufficiently indicates its object.

A new officer was to be appointed to the court of appeals, whose official denomination was "the sergeant of the court of appeals;" to be commissioned as the constitution directs, that is, by the governor, &c.; and *to hold his office during good behaviour: to take the oath prescribed, and give bond, &c.* His duty was to attend the court of appeals, and perform the same duties to them, that the sheriff, who had previously attended, was by law required. He was authorized to execute such process out of court, as issuing from the clerk's office, might be

directed to him for any part of the state; and could appoint as many deputies as he pleased. His fees were two dollars a day for attending court, and those allowed by law for executing process.

Forty-one acts were passed at this session—partaking of the usual variety of personal, private, local, special, and general; those for divorces excepted.

The revenue paid the expenditure for the year—disbursements, between seventy and one hundred thousand dollars; but no regular statement has been seen.

[1809.] Having merely mentioned the fact of the embargo, without comment, the same course, for the same cause, an invincible restraint as to limits, will be pursued, as to some of the most ostensible inducements to the war that ensued the measures of the government of the United States, in connexion with that suspension of their rights of commerce.

This primary mode of defence had been in operation about fourteen months, when, in the beginning of March, 1809, the *non-intercourse* with Great Britain, France, and their *dependencies*, was enacted by congress. This removed the embargo, and gave origin to the Rambouillet decree of Bonaparte, of the 23d of March, 1810; under which many millions' worth of merchandise, carried by citizens of the United States, into Spain, Naples, and Holland, previous to that time, were seized, and confiscated, for the use of the French treasury.

The first act to be noticed in 1809, is one making a new county out of Logan and Ohio, to be called, BUTLER: to have effect from and after the 1st day of May, 1810: "Beginning at the old Buffalo ford on Gasper's river, where the division line between Logan and Warren crosses the said river; thence a direct line to a point that is fifteen miles due north from the court house in Russellville; thence due west to the Muhlenberg line between the counties of Muhlenberg and Logan, and with said line to the mouth of Muddy river; thence across Green river a direct line to the top of the dividing ridge between Thompson's fork of Indian Camp creek, and Caney creek; thence to

where the state road intersects the head of Welch's creek; thence a direct line to the mouth of Bear creek; thence down Green river to where the dividing line between the counties of Logan and Warren strikes Green river; thence with said dividing line to the beginning."

GRAYSON county takes its rise in this session: to have effect from and after the 1st day of April, 1810: "Begining at the mouth of Bear creek, on Green river; thence a straight line to where the state road first crosses a head branch of Welch's creek; thence a direct line to the top of the dividing ridge between the head of Thomas's fork and Indian Camp creek and the waters of Caney creek; thence a straight line to the mouth of Brown's creek; thence up Rough creek to the mouth of Meeting creek; thence up Meeting creek to the forks; thence up the south fork to the head thereof; thence a line to the head of Shaw's creek, so as to include Isaac Hyndes; thence down Nolin to the mouth; thence down Green river to the beginning."

Acts of assembly were now declared to be in force from their passage, unless otherwise declared in the act.

An original act to incorporate the Frankfort Bridge company, passed this session. The details are inadmissible.

The mode of taking in lists of taxable property, was altered at this session. It had been the business of the commissioner appointed for the purpose, to call on each person in his district, for a list of tithes and taxable property: for the like purpose in future the county courts were to appoint some person in each militia company, who was to give ten days' notice that he would attend the muster in April and June; and the people were required to go and be taxed, or, what amounted to it, give in a list of their taxable property; subject, in case of failure, to a fine of five dollars, and treble tax upon all property discovered and listed by the commissioner. The party, being man, woman or child, young or old, might, by going to the house of this list gatherer, there give in the list, before the 1st of August in each year.



"An act to amend the acts regulating the court of appeals," enacts, that the process from the court shall bear test in the name of the clerk; that, except the chief justice, each judge thereafter appointed, should not have any designation, as, second, or third, judge; but should be commissioned in general terms, and take precedence according to the date of commission: all other laws on the subject were repealed.

Not being able to discover any use in this act, it is ascribed to an idle hour, and the old adage, that "It is better to do any thing than lick your paws."

The salary of the treasurer was increased to nine hundred dollars annually, in quarterly payments.

Ninety-seven acts constituted the stock of this year's production; the greater number of which were of the general character of *relief*, of one kind or other; resembling the productions of previous sessions, and evincing no less the diversity than the fecundity of legislative heads.

The treasury reports, as far as seen, though defective, exhibit something like one hundred thousand dollars of expenditure: whence may be inferred equal receipts.

It has not been thought necessary to notice each act for incorporating library companies, although some have been mentioned as specimens: and here it may be remarked, that several had been instituted with corporate powers since the change of constitution—nor, it is believed, were any applications refused; as it was only for the general assembly to pass the law: the incorporators were left to find the funds and manage them as they pleased.

[1810.] The arrangement with Mr. Erskine, British minister, in 1810, removed for a time the non-intercourse with his government; and many American ships and cargoes were navigated to her ports. The acts of the minister were disavowed, as being contrary to his instructions—but the American property was not seized, or confiscated.

The non-intercourse was reinstated, of course.

On the 2d of November, 1810, the president of the United States proclaimed the French decrees, revoked, as to the commerce of American citizens. A fact, which it is certain was not true. The effect, however, was to restore commercial intercourse with France.

The first act of 1810, was to incorporate the Lebanon library company, in the county of Christian: nor was this the only act of the kind passed this session:—which shews, no less than the number of academies, the public patronage which was extended to institutions connected with literature.

“An act authorizing a lottery, to improve the navigation of the Kentucky river,” like most other acts relative to navigable rivers, came to nothing.

Was the navigation of Kentucky to be judged of by the number of acts on the subject, it might reasonably be thought to possess more navigable rivers, and to be more navigating than any other country in the world. The curiosity of a reader of the legal code on the subject, might indeed be excited to inquire, why so many acts were passed authorizing so many milldams to be built across these navigable waters. Let it not, however, be imagined, by any such inquisitor, that permission is so often given by law to erect mills on navigable streams, with any view of rendering the navigation more difficult or hazardous.—No: for besides that the stream for half the year is of no use to boats or mills, the law makers in general are the best natured creatures on earth, they desire to serve or oblige every one; at least until they are sure of a majority of voters—thus they will pass a law at one session, to render a stream navigable; the next year, on the application of some other, they will authorize the putting a milldam in it; and the succeeding year, upon the petition of half a dozen voters, pass an act declaring all such obstructions nuisances, and order them to be prostrated.

Henderson county was divided. This is always an operation of the law making power: for which there seems a tacit agreement, between this species of corporation, and the legislature, that it may be divided at pleasure; provided the parts,

polypus like, shall each make a whole one—as was now the case. The part cut off, will alone be noticed: and that was to become a county, by the name of UNION, on the 1st day of May, 1811: “Beginning at the upper point of the 18 mile island, formerly called Elk island, on the Ohio river; thence a straight line to Highland creek, 1 mile above Higgins’s mill, measured along the meanders of the creek; thence up the creek to the White Lick fork thereof; then a direct line by Harper’s head, to the line of Hopkins county; thence with that line to Trade-water river; thence down the same to the Ohio river; and up the Ohio to the beginning.”

An act to amend the act authorizing a lottery for the purpose of improving the navigation of the Kentucky river, authorized the seven trustees to meet in Lexington at the Kentucky Hotel on a day named, and there take measures for other meetings. The whole business, it is believed, came to nothing.

“An act further to regulate the payment of the debt due this commonwealth for the sale of her vacant lands,” had direct reference to the Green River settlers, who were thereby further indulged. The impolicy only, is worthy of remark.

“A mutual assurance society against fire on buildings in this commonwealth,” was established in Lexington, and incorporated, with ample powers, by an act containing five sections, with but little effect.

“An act to amend the act altering the mode of taking in lists of taxable property,” exempts persons who are not bound to perform military duty, from attending muster fields to give in a list of their taxable property—and permits them to send a written list on oath, to the list gatherer: extending to nine sections only.

The mode in use for recovering rent by distress was revised by an act of this session.

Hitherto the proprietor who had let his land on lease for money or tobacco, could, of his own warrant, authorize the sheriff to seize the goods of the tenant, for rent due and in arrear, to sell, and satisfy the amount stated; unless the tenant contested the demand, and entered into bond with security to

abide the decision of the court; which, however, if he did, the sheriff was bound to return it to court; whence it became a suit between the parties, to be tried, and adjudged in due course of law. The act just alluded to, required of the proprietor, called, landlord, according to the idiom of the English common law, to go to a justice of the peace, make oath to the amount and justice of his demand, and obtain from him the warrant of distress; on which the subsequent proceedings were nearly as before, except that the goods of the tenant only, and not any that might be found on the land, were subject to be distrained for the rent.

Both these changes seem reasonable, while the first appears to be a necessary consequence of the change of government: For notwithstanding the right of the tenant to litigate the question, yet he was required to give bond and security, in order to get into court—which seemed a hardship, that no man should be exposed to, upon the bare personal authority of an interested individual. There was another provision also in the act which was plausible, the recovery on the trial of the replevin, was reduced from three times the amount of the rent in arrear, to ten per cent upon the amount due; and the right of distraining, confined to rent reserved in money: again, a further enactment, exempted the lien which the lessor had on the lessee, from every thing in the country, but the produce of the land; and in towns, for house rent, reduced it to household furniture; and lastly, when distress should be made and the demand was admitted, the lessee was allowed to replevy the debt, by giving bond and security to pay it at the end of three months.

This act is highly indicative of the spirit of legislation which was rapidly growing in the country, that of relaxing the cords of obligation in matters of contract between man and man. The law had previously been too rigid, and called for relaxation; it exhibits, however, what is extremely common in such cases, a spring to the other extreme: which placed rents, the annual support of families, and therefore requiring the greatest punctuality in their payments, nearly on a footing with

ordinary contracts; which had long been treated by law makers as if they were not evidence of private rights, and property, to all intents and purposes.

One hundred and nine acts were passed at this session: much the greater number for private accommodation, and too similar to others under the like denomination, to be particularly noticed.

The revenue of this year may be estimated at about \$100,000; and as usual, nearly balanced the expenditure.

A census had been taken this year, the result of which was, 324,237 white free persons; 80,561 slaves; 2,759 free persons of colour.

Increase of free persons in the last ten years, 144,362; of slaves, 40,218; of free persons of colour, 2,115: total population of all descriptions in 1810, is 407,057.

[1811.] March 1811, congress passed the non-importation act; affecting commerce with Great Britain to a great extent; that to France, very inconsiderably.

Commodore Rodgers, on board the frigate *President*, about the middle of May, 1811, attacked, crippled, and defeated, the British armed ship the *Little Belt*.

Under orders from the war office, General William H. Harrison, in the summer 1811, made it known that he should march an army against the Prophet's town, at Tippecanoe; in order to make terms with him, &c.

The first act placed on the statute book of this year, is one to revise and amend the militia law. This is no otherwise to be noticed, than to say, that it has one hundred and five sections, and fills thirty pages. It is probably the best digested of any of the many passed upon the subject; it has, notwithstanding, been amended.

The act authorizing a lottery, to improve the navigation of Kentucky, was amended the second time at this session; one dollar per day was allowed the commissioners, for their attendance on the business of their appointment.

"An act further to regulate the payment of the debt due the commonwealth for the sale of her vacant lands;" contains the usual postponements and indulgences: containing ten sections.

The next act is entitled "An act to increase the jurisdiction of magistrates." The first section gives the jurisdiction respectively of debts and accounts not exceeding fifty dollars.

The third section increases their fees, as follows: "in addition to the fees now allowed by law, the justices of the peace shall be entitled, for the trial of all suits over five pounds, viz:

For issuing a warrant, . . . . .	\$0 12 5
For giving a judgment, . . . . .	0 12 5
For issuing an execution, . . . . .	0 12 5
For recording his judgment, . . . . .	0 12 5

An appeal was allowed from this judgment to the circuit court of the county, where it was to be docketed as an original, and like proceedings had on it.

The trial by jury was not provided for in this act, which exposed it to be declared unconstitutional by the court of appeals; whence it was afterwards amended so that either party might have a jury if they desired it—and hence the law has been constitutional, say the court.

There is no reason why the law should not be constitutional, only, as it has been shewn, a justice of the peace is not a court; nor can the legislature erect a court, and fill it with one, or more judges; nor can they make a court of any man, by giving, or attempting to give him jurisdiction by law.

When the legislature have in due course of law, established a court, they may prescribe its jurisdiction within the constitution; but the governor, by and with the advice and consent of the senate, is to appoint the judge, or judges: so says the constitution.

At this session, the occupying claimant law passed 1797, was amended. Rents were not to be allowed, prior to the rendition of a judgment, or decree, as the case might be, at law, or in chancery, in favour of the better claimant: hence it was made the interest of the party in possession under a bad claim, to postpone and put off a final decision, as long as possible; which the rents of the land enabled him to do. There was no saving of the rents to those who had commenced suits under the former law, which entitled

them to rents, if successful, from the time the suit was instituted, as an offset to improvements made on the land. The amendatory act, left the party suing, under the necessity of paying for all improvements, however useless, which the occupant should have put on the land at any time, or of surrendering his title to it, at the woodland price. Other changes were made, of but little importance, only as they contributed further to evince the progressive encroachments on the rights of real estate.

All seminary lands were by act of this session, permitted to be sold, through the instrumentality of the county courts.

"An act more effectually to suppress the practice of dueling," was passed at this period. The method proposed, and enjoined, was, to require of all legislators, governors, and judges, in short, of all civil and military officers, an oath "that he, or they (as the case might be) have neither directly nor indirectly, given, accepted, or knowingly carried a challenge to any person or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of this state, since the 1st of April, 1812; and that he or they will neither directly nor indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of this state, during their continuance in office." And upon their refusing to take the oath aforesaid, their office was to become vacant, and to be filled in the same manner as if the party refusing had resigned.

Thus was the foundation laid for a new system of legislation—by way of amendment, and indulgence, from time to time, as application might be made. While, and it will be mentioned now, as not worthy of notice hereafter, that in the session of eighteen hundred and twenty-three, two of the members of the house of representatives refused to take the oath, and were permitted to take and retain their seats throughout the session. They were members of a majority, hereafter to be better known in the transactions of that year, by the name of the *relief party*; and afterwards, as JUDGE BREAKERS.

"An act to provide for the ascertainment of the boundary line between this state and the state of Tennessee," is abundantly

dantly indicative of the object. The means proposed for its attainment, were "the appointment of two commissioners on the part of the state, who, with the commissioners to be appointed on the part of Tennessee, were to run and mark the line between the two states agreeably to the charter of king Charles II. and acknowledged by the twenty-fifth section of the declaration of rights, in the constitution of the state of North Carolina; and also acknowledged by the twenty-second section of the declaration of rights in the constitution of Tennessee: beginning on the top of Cumberland mountain, at thirty-six degrees thirty minutes north latitude, when accurately taken; and from thence to run west a right line, in thirty-six degrees, thirty minutes north latitude, so far as not to run into the lands claimed by the Indians."

But there had been a line run by Doctor Walker, as heretofore stated, upon different ground, which had been ascertained to be in favour of Tennessee; and which may be assigned as the reason why the commission failed of its purpose. The line of Walker was claimed by Tennessee, as having already delineated the charter of boundary to the Tennessee river; which limited the lands claimed by the Indians, and over which it was not proposed to extend the line: therefore, there remained nothing to be done.

Interest was allowed to be computed on judgments for damages rendered for all contracts in writing, for money, or tobacco, where execution should be delayed by dilatory proceedings on the part of the defendant, with a view to further litigation, if in the end the judgment was sustained. An important change in that part of the remedial system favourable to justice, and hence the more to be noticed; for it will afford a striking contrast with other acts touching the administration of that subject; which, it would seem, could only at intervals make successful efforts to reclaim her rights.

"An act to suppress private associations for the purpose of banking." The practice hereby attempted to be suppressed, was, no doubt, the commencement of great evils. The means proposed, were by assigning penalties on those concerned in



banking: and had the law been executed, would no doubt have put a stop to that species of fraudulent speculation. In future the subject will merit further attention.

"An act fixing the ratio and apportioning the representation for the ensuing four years," gives the following result, viz: seven hundred qualified voters for each representative; eighty representatives, and thirty-one senators. At this time there were fifty-six counties, among which the representatives were distributed as follows:

"From the county of Adair, one; from the county of Barren, two; from the county of Boone, one; from the county of Bracken, one; from the county of Bourbon, three; from the county of Breckenridge, one; from the county of Bullitt, one; from the county of Bath, one; from the counties of Butler and Grayson, one; from the county of Caldwell, one; from the county of Clarke, two; from the county of Campbell, one; from the county of Christian, two; from the county of Cumberland, one; from the county of Clay, one; from the county of Casey, one; from the county of Fayette, three; from the county of Floyd, one; from the county of Fleming, two; from the county of Franklin, one; from the counties of Greenup and Lewis, one; from the county of Garrard, two; from the county of Gallatin, one; from the county of Green, two; from the counties of Hopkins and Union, one; from the county of Hardin, two; from the county of Harrison, two; from the county of Henry, one; from the county of Henderson, one; from the county of Jefferson, two; from the county of Jessamine, one; from the county of Knox, one; from the counties of Lincoln and Rockcastle, two; from the county of Logan, two; from the county of Livingston, one; from the county of Mercer, two; from the county of Madison, three; from the county of Muhlenberg, one; from the counties of Montgomery and Estill, two; from the county of Mason, two; from the county of Nelson, three; from the county of Nicholas, one; from the county of Ohio, one; from the county of Pulaski, one; from the county of Pendleton, one; from the county of Scott, two; from the county of Shelby, three; from the county of Woodford, two; from

the county of Warren, two; from the county of Wayne, one; from the county of Washington, three."

"An act to amend the act entitled 'An act to amend the law respecting cut money.'" The fourth section of the amended act was repealed. That enacted, that cut money should not be received into the treasury after the 1st of April, 1812. The present act authorized its reception *by weight*, for three years from its passage.

The law for taking in lists of-taxable property, was again amended. The amendatory act has only six sections; which principally relate to the duty of the commissioners, requiring them, among other things, to call on widows and infirm persons, for their lists—while the rest of the people, are to meet, or call upon them; subject to a fine upon his report to the county court, in case of failure.

The revenue of the year, still on the increase, found the consumption equal to its product: expenditures may be set down at something less than ninety thousand dollars.

After the lapse of fifteen years of peace with the Indians, the fruits of General Wayne's victory and of Jay's treaty, the war was roused again, in October and November, 1811, by General Harrison. This gentleman, a native of Virginia, and the son of one of her former governors, became when young an ensign in the army, and a member of General Wayne's family. Possessing a versatile genius, he passed with much facility into the confidence of General Wilkinson, who served with and succeeded Wayne; although the two were in the relation of enemies in fact, and opposites in character. Harrison, in the sequel, holding various military situations from time to time in the frontier territories, was made governor of Indiana, superintendent of Indian affairs, and commissioner of the United States for the purpose of buying Indian lands. Offices which, it is believed, should never be united; because they are but too subject to minister to each other's abuse. The governor holds the military power; the superintendent pays pensions, or annuities; the commissioner, by treaty, creates them, and stipulates payment in money, clothes, ammunition, &c.: creating thus, a circle,

on which he may take the rounds; and on different points of which, he may accumulate, or dissipate, the objects of his passions, for war, avarice, or debauch, as they shall happen to preponderate, and opportunities present themselves.

It may perhaps be said, the war of 1811 was fermenting in the remnants of dissatisfaction, which ensued the treaty of Greenville, from that time; and that if General Harrison had not commenced it, the Indians would. Besides that this assertion, if made, has no evidence adequate to a rational support when applied to the war of 1811, it is well known that the Indians had been made easy as to the only circumstance about which they had expressed discontent; their independence as nations; which was apparently implicated by that treaty.—The project of a general confederacy among them not to sell any more land by partial treaties, nor without the consent of the confederation, had not offensive war for its object; although resistance to encroachment, was undoubtedly one of its primary principles.

In any other than Indians, an idea so worthy of the most ardent patriotism, and of the most enlightened policy, would have merited a prompt adoption, and should have conferred immortality on its author. It is sometimes a resource of the weak against the strong. Had it been reduced to practice by the Grecian states, they could not have been enslaved by Phillip—while the United States, now the rival of imperial crowns, without its fraternising influence, would still have been British colonies. To civilized Americans, to all weak nations, the principle of *federal union*, where consolidation cannot be admitted, is a prize of inestimable value; and to be realized if practicable.

It has often been said, that the Indians had been stimulated, and prepared for war, by the British, and that General Harrison only anticipated the blow.

Justice requires that truth only, should be told, or believed. That the British expected the United States to declare war against them for some time before it was done, and in that event intended to employ the Indians, are facts not to be ques-

tioned. That they intended to begin the war, would, if asserted, require proof:—not that there is supposed to be any thing in their morality to render it questionable, but an invincible objection to it is found in their interests at the time; as connected with their European wars, and their weakness on the American continent.

The same sense of weakness, without doubt, induced them to engage the Indians in case of hostilities. Nor does any declamation on the side of the United States' government, compensate for the folly of making war on those Indians, in advance, rather than conciliating them; and even holding out to them the idea of employment, in case of war with Great Britain. If the United States wanted the humanity to restrain them from carrying war, (its consequences were not to be restrained,) into a dependent, but unoffending territory, they can merit but little credit with the man of reflection, for omitting, or in the first instance, refusing, to engage the Indians in the field, in the event of war. Besides, knowing that the British had more interest and influence among the Indians, than they had; the party in power might cautiously reserve to themselves the right of censuring a conduct on the part of the British, which was to give them credit with their adherents in proportion as they had abstained from both the example and imitation of their opponents, at whatever loss.

Not, however, to forestall the subject, but carefully to attend to the facts, which are known; it is to be stated, that the first human blood spilt after the peace of 1795, between the parties to this war, is believed to have been that of one, or more Indians, killed within the present state of Indiana, by a party from Breckenridge county, in 1806 or 7: about which a prosecution was attempted by the attorney for the United States.

A rescue, after arrest, being effected, a prosecution was also commenced against those concerned, for that; but afterwards dismissed, for want of law to support it, as it was thought, by an order from the attorney general, communing with President Jefferson, who sanctioned the *noli prosequi*.

If there was any instance before this, of an Indian's killing any white person, it is thought not to have gotten into print, the

receptacle for such things: nor is any tradition of the fact now recollected. The peace, certainly was not violated on the part of the Indians, or it would have been known, and recorded.

To turn a little back—In 1809, Governor Harrison held a treaty with the Delawares, Miamies, and Potawatomies, from whom he purchased for the United States, a large territory lying on both sides of the Wabash, and extending up the river for sixty miles above Vincennes. Previous to this time, and for about one year, *the Prophet*, a chief of the Shawanee tribe, and brother to Tecumseh, had led a band, or colony, of several hundred men, to the north bank of the Wabash, opposite Tippecanoe, where they were settled, and living, when the aforesaid treaty was concluded at fort Wayne. And although this carried the territorial line within about thirty miles of the Prophet's town, he had not been invited to the treaty.

It is not asserted, that Governor Harrison, was bound to notice, and respect his occupancy, his hunting grounds, or the boundary claimed by him. Nor will it be insisted, that the *Prophet*, and his adherents, were bound to preserve their respect, or good temper, towards Governor Harrison. It is not always that *little* men are insensible to the slights and disrespect put upon them by the *great* man. Nor is feeling of this nature less acute in the unlettered man of the forest, who has been elevated to command, than in the more polished citizen, under similar circumstances. Could Governor Harrison have seen his equal in the Prophet, he would undoubtedly have respected his rights, both territorial and magisterial; but, thought weak, he was treated with inattention, if not with disrespect.

What must have also heightened the chagrin resulting from these transactions, in both the brothers, is, that even Tecumseh was not at the treaty, and that it was in direct contravention of the grand principle of union, and common property; which they had both embraced with the utmost fervour, and were exerting, each in his own way, the full force of his genius to effectuate.

Very soon after this treaty was made, the discontents of both Tecumseh and the Prophet, were openly and repeatedly uttered. Their experience could but teach them, that when

boundaries were once prescribed to the white people; they were soon filled up; and then pressed to be extended; or soon over-leaped. They could but apprehend, that they would in a short time have the Long Knife for their neighbours; or be compelled to remove again, as they had previously been from Greenville. While the utmost uneasiness and discontent were observed to pervade their councils:

By way of repelling complaints, Governor Harrison said, "it never had been suggested, that they could plead even the title of occupancy to the lands"—which however, before the claim was made, *as he had not given them a day of hearing*, wherein to make it, the land was conveyed, by formal instrument, to the United States. Notwithstanding this very cogent reason of the governor, which implies a statute of limitations, and as much of the common law doctrines of disseisin as Tecumseh or the Prophet may be supposed to know—but who cannot be disgraced by adhering to the right of possession; as that is, even at *common law*, the last link in the chain of title, the keystone in the arch of conquest; that possession they had; and that should have been respected. When did not possession constitute Indian title? When was more than possession ever required to evidence such title? unless it was by Governor Harrison? What records of courts'leet, or courts baron, had the Miamies, to produce to Governor Harrison, whereby to establish their right? But "their property had been acknowledged by the first white people."

That might have been for twenty years, and twice as much; and their title then, not a year old, as good as it was the day before the Prophet dispossessed them. For, all the law learning displayed by the governor on this subject notwithstanding, it may be safely affirmed, that the possession of the Prophet and his tribe, was not the possession of the Miamies; but that the possession, being in the case the sum and substance of right and title, was in the nearest hunters. And a decisive evidence of it; if more was wanted, is, that the Miamies remonstrated, and the Prophet would not give up—but continued to hold, as a conquest, if you please, both town and country.

The just and upright governor, after all, that none should have aught against him, at the great man's palace, or the little man's pen, cites Tecumseh to Vincennes; his own stronghold, to make known his claims; and mocks him, with a taunt, that if he can establish his claim to be "good," his honour being the judge, he shall have his land, or an equivalent. An equivalent!! to the high-born soul of Tecumseh; an equivalent for a country!!! The governor might conceive it! Tecumseh could not. Hear what the noble savage said, when in audience:

"It is true I am a Shawanee. My forefathers were warriors; their son is a warrior. From them I only take my existence; from my tribe I take nothing. I am the maker of my own fortune; and oh! that I could make that of my red people, and of my country, as great as the conceptions of my mind, when I think of the Spirit that rules the universe. I would not then come to Governor Harrison, to ask him to tear the treaty, and to obliterate the landmark; but I would say to him, Sir, you have permission to return to your own country. The being within, communing with past ages, tells me, that once, nor until lately, there was no white men on this continent; that it then all belonged to red men, children of the same parents, placed on it by the Great Spirit that made them, to keep it, to traverse it, to enjoy its productions, and to fill it with the same race—once a happy race; since made miserable by the white people; who are never contented, but always encroaching. The way, and the only way, to check and to stop this evil, is, for all the red men to unite in claiming a common and equal right in the land; as it was at first, and should be yet; for it never was divided, but belongs to all, for the use of each. That no part has a right to sell, even to each other, much less to strangers; those who want all, and will not do with less."

He said, "That the white people have no right to take the land from the Indians; because, they had it first, it is theirs; they may sell, but all must join; any sale not made by all, is not valid: the late sale is bad; it was made by a part only:—part do not know how to sell; it requires all, to make a bargain for all. That all the red men had equal rights to the un-

occupied land; that the right of occupancy, was as good in one place as in another; that there could not be two occupations in the same place; that the first excluded all others: that it was not so in hunting, or travelling; for there the same ground would serve many, as they might follow each other all day: but the camp is stationary; and that is occupancy; it belongs to the first who sits down on his blanket or skins, which he has thrown upon the ground; and till he leaves it, no other has a right."

And having thus explained his right to the land in question, he seated himself among his warriors. The governor, though self-constituted judge, rose, and made reply. He said, "That the Indians, like the white people, were divided into different tribes, or nations; and that the Great Spirit never intended that they should form but one nation, or he would not have taught them to speak different languages, which put it out of their power to understand each other;—and that the Shawanees, who emigrated from Georgia, could have no claims to the lands on the Wabash, which had been occupied far beyond the memory of man, by the Miamies." It will be perceived, that this was mere evasion, and no refutation of the claim asserted to the land by Tecumseh: who made no pretension to it as a Shawanee; but as an Indian, or red man, by occupancy, or actual possession; and rather on behalf of the whole race, than of any particular nation. The governor, having said this much, sat down, to have it interpreted: when Tecumseh, hearing it repeated in his own language, exclaimed, "It is all false;" and giving a sign to his warriors, they sprang upon their feet, and laid their hands on their tomahawks and war clubs. A large concourse of unarmed citizens attended the governor; who, expecting an assault, took an erect posture, and seized his sword to defend himself: a pause ensued. An officer brought up an armed party, of twelve men, who had been posted near as a guard. The governor then told Tecumseh, that "he was a bad man; that he would have no further talk with him; that he must return to his camp, and set out for his home immediately. The



conference being thus abruptly ended, Tecumseh leisurely withdrew; not a little angry with the governor; and yet even more mortified, by a conviction, that his own behaviour was wrong. That night, he remained in his camp—while the governor ordered in two companies of militia, to aid the regulars, outnumbered by the Indians. Early next morning the interpreter was sent for by Tecumseh; who apologized for his past behaviour, and requested the governor, to renew the conference. The governor, first making all due military preparations, consented to receive Tecumseh, and his attendants. The leader, said, that he had no intention of offering violence; that the feint was made on the suggestion of some white men, who thought the governor timid. He was asked, if he had any other grounds than those already stated, on which he claimed the land that had been sold and ceded to the United States by the last treaty. His reply was, "No other." The governor, determined not to allow the claim in any shape or character, left Tecumseh to infer it, by asking him, if he was resolved to make war if the land was not relinquished by the United States; and by conjuring him, as he was a great warrior, not to dissemble his intentions. A sarcastic smile, disclosed an equal contempt for the compliment, and the insinuation; which was immediately succeeded, in a tone of impressive gravity, "It is my determination: nor will I give rest to my feet, until I have united all the red men in the like resolution."

Thus ended this famous session, of Governor Harrison's projecting. And it may be said, from this time, each side contemplated war. With confidence it may be affirmed, that, on the part of Tecumseh, war was suspended in his mind, upon the condition of his acquiring force by the union of the Indians, or the commencement of hostilities between the United States and Great Britain. On the part of General Harrison, there was already generated, a willingness to begin hostilities, should Tecumseh's Indians, under the ostensible control of the Prophet, refuse, or decline, to obey his dictation. He might think such a course right in a political point of view, or necessary for

the safety of the frontiers; he had even manifested some passion for military fame; it could not well fail to add to both his patronage and emolument, should a war take place. It is not, therefore, to be imagined, that the governor viewed its approach with any desire to ward it off. In fact, it required but little more to be done, to obtain the decision of peace; or war; nor was that acquisition very long suspended.

It did not depend upon the mere rumour of common fame, but was asserted in well written documents, that his honour, the governor, had an interest in a store, out of which Indian annuities were often paid, at enormous prices: which gave much discontent; but which, ensured no redress. The Indian, but too apt to confound injustice with robbery, might even lose his good temper, as he felt himself deprived of his clothing, or other expected supplies, or discovered them to be of bad quality, and but of little use, although delivered to him at a high price.

It has been asserted, in so many words, that in the winter and spring, 1811, that several murders were committed—but no name, place, or date, is given. And while this affirmation of murder by the Indians on the frontiers, may possibly be true, it is confessed, that the fact would have been rendered the more probable, had it been stated with more circumstances. It is however the less probable, as the assertion was not accompanied by any account of a demand for the murderers, but only general assertions made applicable to any other species of depredation: while it is said, that a militia officer, somewhat more particular, was sent, by Governor Harrison, to demand horses, that were stolen; and which, it is added, were not surrendered. Besides, it was asserted, at the time when disputes took place at Vincennes, about the origin of the war, *“that no murder had been committed by the Indians on the white people, previous to Governor Harrison’s march in September or October of the year 1811.”* And certain it is, that previous to that time, it was not said, nor understood, that war had existed for the last sixteen years. In the course of that year, it was, that a second formal interview took place, at Vincennes, between Governor Harrison

and Tecumseh, at the instance of the latter; when each was attended by his warriors; partially armed, by previous arrangement. Where, under the denomination of *side arms*, the governor's dragoons carried pistols in their belts—at the sight of which, it was thought, that Tecumseh was uneasy, on meeting with what he did not expect to see; a species of arms of much import, and for which he had no equivalent—his people having left their firearms, bringing only warclubs, tomahawks, and knives. The dragoons, as a matter of course, had their swords; and these, it is probable, were the *side arms* which Tecumseh expected. It is clear, the arming was unequal—and that some men, of more caution and less firmness than Tecumseh, would have remonstrated against the odds, if not against the deception. The conference, however, took place between the rival chiefs. The governor complained of *depredations* committed by the Indians of Tippecanoe; the refusal on their part to give satisfaction; and the accumulation of force at the place, for the avowed purpose of obliging the United States to surrender the lands obtained by the last treaty. Tecumseh, in his answer, denied that he protected depredators; but admitted, and vaunted in his design of forming all the nations into one grand confederacy, for the purpose of stopping the encroachments of the white people, upon the country common to the red people. He said, "He viewed as a *mighty water*, the policy pursued by the United States, of buying all the land; that it threatened his people, as a high flood, ready to burst its bounds, and cover them with a total ruin. That to stop this deluge, he was trying to form a *dam*, by uniting all the tribes, to prevent each particular one from selling any land to the white people. For, said he, every sale opens new channels to the approaching inundation; which, in time, will overflow the whole country. But this mighty water must be resisted: I have undertaken, and stand bound to do it. I go to see the nations, and to call them to the great work—both the old men and the young, the warrior and the hunter. And if your Great Father, who sits over the mountains, drinking his wine, does not tell you to give up the Wabash land; he will

compel you, and me, to fight for it: when fountains of blood will flow, as rivers of water for quantity. You shut your ears—you hear me not: I am gone.”

If Tecumseh had meditated a *coup de main* on Vincennes, as some have suspected, he was prevented by the vigilance of Governor Harrison.

But it seems more consistent with his character, to impute his visit to a desire of making another, and the last effort, by negotiation, to obtain a retrocession of the land: for it is certain, he was not ready to begin the war; and at that time, avowed he was on his way to solicit allies and confederates, to his grand scheme for stopping the encroachments of the white people on the Indian lands. The importance and utility of this project to the Indians, had, doubtless, rendered its success probable to the ardent and vigorous mind of Tecumseh. Peace he preferred, if with peace the land could be recovered; but if not, war, as an alternative, was completely embraced in his system of policy.

While at Vincennes, passing near Winnemack, and pointing to him, “There,” says Tecumseh, “is the *black dog*, that makes lies and tells them, to cause white men and red men, to hate each other.”

This Winnemack, a notorious villain, had the reputation of Governor Harrison’s confidence. Through his agency, stories of the intended hostilities of the Prophet, could reach fort Wayne, Chicago, Kaskaskias, and St. Louis, nearly at the same time. And from thence, Governor Harrison, by means of the different agents, would of course receive accounts of these rumours, as it were, almost simultaneously. It was not his business to conceal the intelligence; the effect of its propagation, on the public feelings, is easily conceived—the country was kept in a state of alarm. This is thought to have comported with the main design.

Tecumseh, from Vincennes, proceeded on his mission to the southern tribes; and after visiting the Cherokees, Creeks, Choctaws, and Chickasaws, he crossed the Mississippi, and pursued his route northwardly, to the river Demois; and thence

returned to the Wabash, the next year, to witness and deplore the ruin of his brother, the Prophet, and his adherents. He had not expected it from Governor Harrison; Tippecanoe was on the land of the red people, to which the white had not yet made claim; he had charged his people not to begin a war; and he had not been present to direct their defence, when invaded. He felt the injury; none could feel it more: he felt the want of forces; the strength of his adversary; and that which seemed lost to others, *their country*, remained to him the dearest object of his hope and confidence. Its fate was to him an agony of expectation.

Governor Harrison had, without doubt, coeval with the last conference at Vincennes, adopted definitively his line of conduct in relation to Tecumseh's Indians. A war, was contemplated as the consequence, and embraced within the design. It was a part of the means to effect the end, to alarm the people of the territory, as a medium through which to influence the general government; whose sanction was indispensable to success. Nothing was of easier execution, than this part of the scheme. The agency of Winnemack, and such men, was an obvious resort—exaggerations were common. It has already been suggested, that no murders, by these Indians, though there might have been by Missouries, had been committed—horses, it is admitted, were stolen; or found in the woods, and carried away by Indians. It was not unreasonable, to expect more serious depredations, even should it extend to murder. Caution is prudence; prevention is better than cure. The governor possessed the laudable desire of being thought "the father of his people;" and to apprize them of their danger, while he shielded them from it, could but ensure to himself, their confidence and eulogiums: to these he aspired.

There was, soon after Tecumseh went to the south, fresh alarms spread throughout the territory; even the people of Vincennes, were *persuaded* to be afraid of the Tippecanoe Indians. To relieve them, a general meeting of the militia was called; certainly with the approbation, if not by the order of the governor. This meeting being furnished with the appro-

private resolutions, setting forth what it was desired the president should hear, not forgetting the necessary compliments to the governor—they were promptly passed; and without loss of time, transmitted, by his excellency, to the war department. These resolutions were accompanied by a strong remonstrance against the inhabitants of Tippecanoe, who were styled a *banditti*—and possibly very justly—who should not be permitted to remain on the frontiers. These proceedings, had the most entire success, with the cabinet at Washington.

The 4th regiment of United States' troops, then posted on the Ohio, commanded by Colonel Boyd, was ordered to Vincennes, and placed under Governor Harrison; who was also authorized to add to the force, by calls on the militia—to take measures of defence—"and as a last resort, to remove the Prophet and his followers, by force." It is useless to question the propriety of such order—then let it pass.

From the moment the governor received these instructions, with a disposition for war, he perceived that he was made the master of the public peace. His next step, was to assemble his army—and then, to march against Tippecanoe: where he was to negotiate the removal of a nation, or by extirpation, "punish their disobedience." His proclamation of the intended enterprise, drew from Kentucky, some of her most ardent sons, as volunteers; and the battle of the 7th November, 1811, became a practical commentary on the governor's skill in diplomacy, and military tactics.

Minute details of occurrences out of Kentucky, do not belong to this history; nor would the preceding review of the measures which led to the war, form a part of it, but for the share taken in it by Kentuckians; while their connexion with the governor, afterwards General Harrison, and his agency in producing hostilities, have entitled him to a place in it; which it would be affectation to deny, and injustice to withhold; and in which his subsequent transactions will keep him, as one of the most prominent, if not the most efficient characters in the exhibition. Of the few Kentuckians in the action, which was fought in the night, with singular bravery, and considerable

loss, the most distinguished for talents, and a promise of future greatness, was Joseph H. Daveiss, who died the next day of his wounds. Colonel Owen, was killed in action—and probably one or two other Kentucky volunteers, who are not known.

Of Colonel Daveiss, it would be an unpardonable omission not to say more. The varied expression of regret which burst upon the public eye, in prose and verse, in elegy and eulogium, gave ample testimony of the impression which the splendour of his talents, and the elevation of his character, had made on the hearts of his associates; while the grateful reception of them by the public, gave demonstration of the admiration and esteem in which their subject was held. Says one: "Among those who are reported to have fallen in the late engagement, is *Joseph Hamilton Daveiss, Esquire*. Influenced by a love of country, and an ardour for military service, he joined the troops under Harrison as a volunteer. The governor gave him the command of the cavalry. His person was of the happiest cast—Nature had stamped "the man," throughout his whole contour. In his bodily conformation, she had been bountiful; in the texture of his mind, and all its attributes, she had been prodigal. He had improved her gifts. He was a lawyer by profession: but he was more than a lawyer; he was a statesman, and a hero. Rich in all the learning of both, he was well qualified for either: but the propensity of his mind was strongly to the military life. He had indulged that propensity, and formed himself for that life upon the best models of ancient and modern times: he could not, therefore, but be well qualified for the station in which he was placed."

Again: "In the fall of Colonel Daveiss, the nation has sustained an irreparable loss. We may truly say, in the language of an ancient people, 'A great man has this day fallen in Israel.' With him, alas! fell many brave men, whose loss will be extensively and lastingly deplored by their friends and their country."

Says another, his companion in arms: "We have lost!—how shall I express it without rending the heart unable to support the shock?—the excellent—the brave—I may say the great Colonel Daveiss is no more. The late engagement of Governor

Harrison, has proved fatal to many who followed this great and inestimable man."

Of the various elegiac poems produced by the death of Col. Daveiss, and dedicated to his memory, it is worthy of remark that one was from the hand of the reverend Bishop Badin. In another, the colonel was compared to Epaminondas, illustrated by the following note, viz: "Each in their spirit and fortune was great; both born poor, both learned, both brave, both mortally wounded in an heroic exertion to turn the doubtful scale of contest in favour of his own party, both lived to see it effected; and both died childless, exulting in the glory of their country."

The governor had now tasted of victory, sweetened with blood; which appeared to sharpen his appetite for more. His vanity more than fermented, it blubbered over; the country was filled with his letters—and the press teemed with his accounts of the battle; in which he sometimes forgot to be consistent.

Yet, all this would have been pardonable, had it not appeared, that in seeking to justify himself, for beginning the war, his further aim was to inflame the minds of the people, and to mislead their judgments, in a most critical period of the diplomatic contest with Great Britain; by representing the Indians as acting under British influence, in committing depredations on the American citizens, and giving out, as an evidence, that they were supplied with "British muskets, and glazed powder"—when it was a notorious fact at Vincennes, that they had been supplied with similar powder, at that place, with the governor's express permission. Besides, they had the right to buy their firearms, and ammunition, wherever they pleased, as well as in the store kept by the governor's partners. A continuance and extension, of the Indian war, were but the necessary consequences, of these dispositions. While it is believed, that neither truth, justice, nor the public good, were promoted by them. War, should ever be avoided, and detested, when unnecessary. Those of aggression are seldom otherwise. But the weak, are ever to be a prey to the strong; the ignorant, to the artful.



Could Tecumseh have written, as well as Governor Harrison, history might convey the whole truth to posterity: at present it is defective.

A principal point in this narrative, has been, to ascertain the real aggressor in this war; as being equally necessary to form a right estimate of personal character, as of public justice; and, if possible, to inspire circumspection, in both governors, and the governed, of every degree in the United States; involving Kentucky, in all future occurrences of the kind.

It is not supposed, that the United States should have yielded to the doctrines advanced by Tecumseh, and surrendered the land claimed, because all the Indians, or even a majority of them, had not agreed to the sale. On the contrary, the utter impracticability of the proposition, renders it inadmissible. Yet, at the same time, a war, depending upon the previous adoption of the project by all the tribes, could not be apprehended as imminent. Tecumseh's absence was suspensive of hostilities; and a proof that he did not intend its speedy commencement.

It is not, however, to be imagined, that even a strong nation, is bound by any ties of forbearance to await an actual blow, from a weak one; when it has certain information, that a determination is formed to strike at a given time, or on a certain event, near at hand. But it is contended, that a great state constantly encroaching upon one that is small, and whose very vicinity is dangerous to such small state, can never be justifiable in making war, until after proof of hostile aggression, refused to be redressed upon proper application, in a peaceable way. That any other course, and especially that adopted by Governor Harrison, implies the right, and bears the means of extirpation. A principle, as detestable, as savagism itself.

It is perceived, in the subsequent conduct of the United States, that as if ashamed of what was done, and cause they had, the 4th regiment was recalled, and Governor Harrison left to sustain the war he had created, with his militia, and upon his own responsibility. For although the Indians manifested their sense of the condition in which they had been

placed, by continuing the war, early in the spring, 1812, on the inhabitants of Indiana, so that they had taken twenty, or more scalps, before the 1st of June, and returned to Tippecanoe, where they commenced raising corn, yet the governor was refused the order of the war office, to his proposal "for raising a mounted corps, with which again to assail them." In this situation, the governor, naturally loquacious, and pressed by his citizens for protection, not only filled his own territory, but Kentucky and the neighbouring states, with his cries of danger, battle, or murder! The Kentuckians, more attentive to the voice of distress, than the laws of their country, volunteered to the number of sixty or seventy men, under the command of Colonel Anthony Crockett, and Captain John Arnold, and were marched to Vincennes, to see what was the matter! And ten days after, they marched home again, to tell they knew not what—leaving the governor and his people, in the *suds*, which he had made for them to beat into bubbles.

In the mean time, Tecumseh appeared at fort Wayne, grave, dignified, and reserved: he adhered to his former opinions, which were briefly expressed—and he let fall some expressions in relation to Governor Harrison, that marked his sense of injury, with a feeling of resentment, which nothing but retaliation could abate. He requested some ammunition for his own use, from the commandant. This was refused. He then said, he would go to his British father, who would not deny him. He paused—appeared absorbed in his own reflections—then giving expression to his countenance, he raised the war-whoop, flourished his tomahawk, and departed; a determined, but magnanimous foe. If some of the means lavished upon Governor Harrison, had been employed to secure the friendship of this distinguished Indian, the government could but have found him useful.

## CHAP. XII.

*General Harrison's official account of the battle of Tippecanoe—Impartial examination of General Harrison's conduct, and accounts in relation to the said battle—The last communication of Governor Scott, &c.*

[1811.] THE accounts of battles, always interesting to humanity, as well as to men of military science, has ever been the favourite theme of history, and cannot be omitted in this.

While it must be supposed, that although every general is not a historian, yet when he assumes the office, that as to himself at least, he has done no wrong; and intending to exhibit an examination of both his conduct, and, his account of it, when it was fresh in its laurels, the whole of both will be published, rather than either should be accused of partiality by an abridgment.

They follow in order, and will serve as a prologue to the general's subsequent achievements.

*"Vincennes, 18th November, 1811.*

*"Sir: In my letter of the 8th instant, I did myself the honour to communicate the result of an action between the troops under my command and the confederation of Indians under the control of the Shawanee Prophet. I had previously informed you in a letter of the 2d instant, of my proceedings previously to my arrival at the Vermillion river, where I had erected a block-house for the protection of the boats which I was obliged to leave, and as a depository for our heavy baggage and such part of our provisions as we were unable to transport in wagons. On the morning of the 3d instant I commenced my march from the block-house. The Wabash above this turning considerably to the eastward, I was obliged in order to avoid the broken and wooden country which borders upon it, to change my course to the westward of north, to gain the prairies which lie to the back of those woods. At the end of one day's march, I was enabled to take the proper direction (N. E.)*

which brought me on the evening of the 5th to a small creek at about 11 miles from the Prophet's town. I had on the preceding day avoided the dangerous pass of Pine creek by inclining a few miles to the left, where the troops and wagons were crossed with expedition and safety. Our route on the 6th for about six miles lay through prairies separated by small points of woods.

"My order of march hitherto had been similar to that used by General Wayne; that is, the infantry were in two columns of files on either side of the road, and the mounted riflemen and cavalry in front, in the rear and on the flanks. Where the ground was unfavourable for the action of cavalry they were placed in the rear, but where it was otherwise they were made to exchange positions with one of the mounted rifle corps. Understanding that the last four miles were open woods, and the probability being greater that we should be attacked in front than on either flank, I halted at that distance from the town and formed the army in order of battle. The United States' infantry placed in the centre, two companies of militia infantry and one of mounted riflemen on each flank, formed the front line. In the rear of this line was placed the baggage drawn up as compactly as possible; and immediately behind it a reserve of three companies of militia infantry. The cavalry formed a second line at the distance of three hundred yards in the rear of the front line, and a company of mounted riflemen, the advanced guard, at that distance in front. To facilitate the march the whole were then broken off in short columns of companies, a situation the most favourable for forming in order of battle with facility and precision. Our march was slow and cautious, and much delayed by the examination of every place which seemed calculated for an ambuscade. Indeed the ground was for some time so unfavourable, that I was obliged to change the position of the several corps, three times in the distance of a mile. At half past 2 o'clock we passed a small creek, at the distance of one mile and a half from the town, and entered an open wood, when the army was halted and again drawn up in order of battle.

"During the whole of the last day's march, parties of Indians were constantly about us, and every effort was made by the interpreters to speak to them, but in vain—new attempts of the kind were now made, but proving equally ineffectual, a Captain Dubois of the spies and guides, offering to go with a flag to the town, I despatched him with an interpreter to request a conference with the Prophet—in a few moments a message was sent by Captain Dubois, to inform me that in his attempts to advance, the Indians appeared in both his flanks, and although he had spoken to them in the most friendly manner, they refused to answer, but beckoned to him to go forward, and constantly endeavoured to cut him off from the army. Upon this information, I recalled the captain, and determined to encamp for the night, and take some other measures for opening a conference with the Prophet. Whilst I was engaged in tracing the lines for the encampment, Major Daveiss, who commanded the dragoons, came to inform me that he had penetrated to the Indian fields; that the ground was entirely open and favourable—that the Indians in front had manifested nothing but hostility, and had answered every attempt to bring them to a parley, with contempt and insolence. I was immediately advised by all the officers around me to move forward. A similar wish indeed pervaded all the army—it was drawn up in excellent order, and every man appeared eager to decide the contest immediately. Being informed that a good encampment might be had upon the Wabash, I yielded to what appeared the general wish, and directed the troops to advance, taking care however to place the interpreters in the front, with directions to invite a conference with any Indians they might meet with. We had not advanced above four hundred yards, when I was informed that three Indians had approached the advanced guard, and had expressed a wish to speak to me. I found upon their arrival, that one of them was a man in great estimation with the Prophet. He informed me that the chiefs were much surprised at my advancing upon them so rapidly—that they were given to understand by the Delawares and Miamies whom I had sent to them a few days before, that I would

not advance to their town, until I had received an answer to my demands made through them. That this answer had been despatched by the Potawatomie chief, Winnemack, who had accompanied the Miamies and Delawares on their return; that they had left the Prophet's town two days before, with a design to meet me, but had unfortunately taken the road on the south side of the Wabash. I answered, that I had no intention of attacking them until I discovered that they would not comply with the demands which I had made—that I would go on and encamp at the Wabash, and in the morning would have an interview with the Prophet and his chiefs, and explain to them the determination of the President—that in the mean time no hostilities should be committed. He seemed much pleased with this, and promised that it should be observed on their part. I then resumed my march; we struck the cultivated grounds about five hundred yards below the town, but as these extended to the bank of the Wabash there was no possibility of getting an encampment which was provided with both wood and water. My guards and interpreters being still with the advanced guard, and taking the direction of the town, the army followed and had advanced within about 150 yards, when 50 or 60 Indians sallied out and with loud exclamations, called to the cavalry and to the militia infantry, which were on our right flank, to halt. I immediately advanced to the front, caused the army to halt, and directed an interpreter to request some of the chiefs to come to me. In a few moments the man who had been with me before made his appearance. I informed him that my object for the present was to procure a good piece of ground to encamp on, where we could get wood and water; he informed me that there was a creek to the northwest which he thought would suit our purpose. I immediately despatched two officers to examine it, and they reported that the situation was excellent. I then took leave of the chief, and a mutual promise was again made for a suspension of hostilities until we could have an interview on the following day. I found the ground destined for the encampment not altogether such as I

could wish it—it was indeed admirably calculated for the encampment of regular troops, that were opposed to regulars, but it afforded great facility to the approach of savages. It was a piece of dry oak land, rising about ten feet above the level of a marshy prairie in front (towards the Indian town) and nearly twice that height above a similar prairie in the rear, through which and near to this bank ran a small stream clothed with willows, and other brushwood. Towards the left flank this bench of high land widened considerably, but became gradually narrower in the opposite direction, and at the distance of one hundred and fifty yards from the right flank, terminated in an abrupt point. The two columns of infantry occupied the front and rear of this ground at the distance of about one hundred and fifty yards from each other on the left and something more than half that distance on the right flank—these flanks were filled up, the first by two companies of mounted riflemen amounting to about one hundred and twenty men, under the command of Major-General Wells, of the Kentucky militia, who served as a major; the other by Spencer's company of mounted riflemen, which amounted to eighty men. The front line was composed of one battalion of United States' infantry under the command of Major Floyd, flanked on the right by two companies of militia, and on the left by one company. The rear line was composed of a battalion of United States' troops under the command of Captain Baen, acting as major, and four companies of militia infantry under Lieutenant-Colonel Decker. The regular troops of this line joined the mounted riflemen under General Wells on the left flank, and Colonel Decker's battalion formed an angle with Spencer's company on the left.

Two troops of dragoons, amounting to in the aggregate about sixty men, were encamped in the rear of the left flank, and Captain Parke's troop, which was larger than the other two, in the rear of the front line. Our order of encampment varied little from that above described, excepting when some peculiarity of the ground made it necessary. For a night attack the

order of encampment was the order of battle, and each man slept immediately opposite to his post in the line. In the formation of my troops I used a single rank, or what is called Indian file—because in Indian warfare, where there is no shock to resist, one rank is nearly as good as two, and in that kind of warfare the extension of line is a matter of the first importance. Raw troops also manœuvre with much more facility in single than in double ranks. It was my constant custom to assemble all the field officers at my tent every evening by signal, to give them the watchword and their instructions for the night—those given for the night of the 6th were, that each corps which formed a part of the exterior line of the encampment, should hold its own ground until relieved. The dragoons were directed to parade dismounted in case of a night attack, with their pistols in their belts, and to act as a corps de reserve. The camp was defended by two captains' guards, consisting each of four non-commissioned officers and 42 privates; and two subalterns' guards of twenty non-commissioned officers and privates. The whole under the command of a field officer of the day. The troops were regularly called up an hour before day, and made to continue under arms until it was quite light. On the morning of the 7th, I had risen at a quarter after four o'clock, and the signal for calling out the men would have been given in two minutes, when the attack commenced. It began on our left flank—but a single gun was fired by the sentinels or by the guard in that direction, which made not the least resistance, but abandoned their officer and fled into camp, and the first notice which the troops of that flank had of the danger, was from the yells of the savages within a short distance of the line—but even under those circumstances the men were not wanting to themselves or to the occasion. Such of them as were awake, or were easily awakened, seized their arms and took their stations; others which were more tardy, had to contend with the enemy in the doors of their tents. The storm first fell upon Captain Barton's company of the 4th United States' regiment, and Captain Geiger's company of mounted riflemen,



which formed the left angle of the rear line. The fire upon these was excessively severe, and they suffered considerably before relief could be brought to them. Some few Indians passed into the encampment near the angle, and one or two penetrated to some distance before they were killed. I believe all the other companies were under arms and tolerably formed before they were fired on. The morning was dark and cloudy; our fires afforded a partial light, which if it gave us some opportunity of taking our positions, was still more advantageous to the enemy, affording them the means of taking a surer aim; they were therefore extinguished as soon as possible. Under all these discouraging circumstances, the troops (19-20ths of whom had never been in action before) behaved in a manner that can never be too much applauded. They took their places without noise and with less confusion than could have been expected from veterans placed in a similar situation. As soon as I could mount my horse, I rode to the angle that was attacked—I found that Barton's company had suffered severely and the left of Geiger's entirely broken. I immediately ordered Cook's company and the late Capt. Wentworth's, under Lieut. Peters, to be brought up from the centre of the rear line, where the ground was much more defensible, and formed across the angle in support of Barton's and Geiger's. My attention was there engaged by a heavy firing upon the left of the front line, where were stationed the small company of United States' riflemen (then however armed with muskets) and the companies of Baen, Snelling, and Prescott of the 4th regiment. I found Major Daveiss forming the dragoons in the rear of those companies, and understanding that the heaviest part of the enemy's fire proceeded from some trees about fifteen or twenty paces in front of those companies, I directed the major to dislodge them with a part of the dragoons. Unfortunately the major's gallantry determined him to execute the order with a smaller force than was sufficient, which enabled the enemy to avoid him in front and attack his flanks. The major was mortally wounded, and his party driven back. The Indians were how-

ever immediately and gallantly dislodged from their advantageous position, by Captain Snelling at the head of his company. In the course of a few minutes after the commencement of the attack, the fire extended along the left flank, the whole of the front, the right flank, and part of the rear line. Upon Spencer's mounted riflemen, and the right of Warwick's company, which was posted on the right of the rear line, it was excessively severe: Captain Spencer, and his first and second lieutenants, were killed, and Captain Warwick was mortally wounded—those companies however still bravely maintained their posts, but Spencer had suffered so severely, and having originally too much ground to occupy, I reinforced them with Robb's company of riflemen, which had been driven, or by mistake ordered from their position on the left flank, towards the centre of the camp, and filled the vacancy that had been occupied by Robb with Prescott's company of the 4th United States' regiment. My great object was to keep the lines entire, to prevent the enemy from breaking into the camp until daylight, which should enable me to make a general and effectual charge. With this view, I had reinforced every part of the line that had suffered much; and as soon as the approach of morning discovered itself, I withdrew from the front line, Snelling's, Posey's, (under Lieutenant Albright,) and Scott's, and from the rear line, Wilson's companies, and drew them up upon the left flank, and at the same time, I ordered Cook's and Baen's companies, the former from the rear, and the latter from the front line, to reinforce the right flank; foreseeing that at these points the enemy would make their last efforts. Major Wells, who commanded on the left flank, not knowing my intentions precisely, had taken the command of these companies, had charged the enemy before I had formed the body of dragoons with which I meant to support the infantry; a small detachment of these were, however, ready, and proved amply sufficient for the purpose. The Indians were driven by the infantry, at the point of the bayonet, and the dragoons pursued and forced them into a marsh, where they could not be followed. Captain Cook, and Lieutenant Larebee had, agreeably to my order, marched their companies to the right flank,

had formed them under the fire of the enemy, and being then joined by the riflemen of that flank, had charged the Indians, killed a number, and put the rest to a precipitate flight. A favourable opportunity was here offered, to pursue the enemy with dragoons, but being engaged at that time on the other flank, I did not observe it; until it was too late.

"I have thus, sir, given you the particulars of an action, which was certainly maintained with the greatest obstinacy and perseverance, by both parties. The Indians, manifested a ferocity uncommon, even with them—to their savage fury our troops opposed that cool, and deliberate valour, which is characteristic of the christian soldier.

"The most pleasing part of my duty, (that of naming to you the corps, and individuals, who particularly distinguished themselves,) is yet to be performed. There is, however, considerable difficulty in it—where merit was so common, it is almost impossible to discriminate.

"The whole of the infantry formed a small brigade, under the immediate orders of Colonel Boyd. The colonel throughout the action, manifested equal zeal and bravery, in carrying into execution my orders, in keeping the men to their posts, and exhorting them to fight with valour. His brigade-major Clark, and his aid-de-camp George Croghan, Esq. were also very serviceably employed. Colonel Joseph Bartholomew, a very valuable officer, commanded under Colonel Boyd, the militia infantry; he was wounded early in the action, and his services lost to me. Major G. R. C. Floyd, the senior of the 4th United States' regiment, commanded immediately the battalion of that regiment, which was in the front line; his conduct during the action, was entirely to my satisfaction. Lieutenant-Colonel Decker, who commanded the battalion of militia on the right of the rear line, preserved his command in good order; he was, however, but partially attacked. I have before mentioned to you, that Major-General Wells, of the 4th division of Kentucky militia, acted under my command as a major, at the head of two companies of mounted volunteers; the general maintained the same which he had already acquired, in almost every campaign, and in almost every battle which has

been fought with the Indians since the settlement of Kentucky. Of the several corps, the 4th United States' regiment, and two small companies attached to it, were certainly the most conspicuous for undaunted valour. The companies commanded by Captains, Cook, Snelling, and Barton; Lieutenants, Larebee, Peters, and Hawkins, were placed in situations where they could render most service, and encounter most danger; and those officers eminently distinguished themselves. Captains Prescott, and Brown, performed their duty also, entirely to my satisfaction; as did Posey's company of the 7th regiment, headed by Lieutenant Albright. In short, sir, they supported the fame of American regulars, and I have never heard that a single individual was found out of the line of his duty. Several of the militia companies, were in no wise inferior to the regulars. Spencer's, Geiger's, and Warwick's, maintained their posts amidst a monstrous carnage; as indeed did Robb's, after it was posted on the left flank; its loss of men, (17 killed and wounded,) and keeping its ground, is sufficient evidence of its firmness. Wilson's, and Scott's companies, charged with the regular troops, and proved themselves worthy of doing so; Norris's company; also, behaved well; Hargrove's, and Wilkins' company, were placed in a situation, where they had no opportunity of distinguishing themselves, or I am satisfied they would have done it. This was the case with the squadron of dragoons, also. After Major Daveiss had received his wound, knowing it to be mortal, I promoted Captain Parke to the majority, than whom, there is no better officer.

"My two aid-de-camps, Majors Hurst and Taylor, with Lieut. Adams of the 4th regiment, the adjutant of the troops, afforded me the most essential aid, as well in the action, as throughout the campaign.

"The arrangements of Captain Pratt, in the quartermaster's department, were highly judicious, and his exertions on all occasions, particularly in bringing off the wounded, deserve my warmest thanks. But in giving merited praise to the living, let me not forget the gallant dead. Colonel Abraham Owen, commandant of the 18th Kentucky regiment, joined me a few days before the action, as a private in Captain Geiger's com-

pany; he accepted the appointment of volunteer aid-de-camp to me; he fell in the action. The representatives of his state, will inform you that she possessed not a better citizen, nor a braver man. Major Joseph H. Daveiss, was known as an able lawyer and a great orator; he joined me as a private volunteer, and on the recommendation of the officers of that corps, was appointed to command the 3d troop of dragoons. His conduct in that capacity justified their choice; never was there an officer possessed of more ardour and zeal, to discharge his duties with propriety; and never one, who would have encountered greater danger to purchase military glory. Captain Baen, of the 4th United States' regiment, was killed early in the action; he was unquestionably a good officer, and valiant soldier. Captains, Spencer and Warwick, and Lieutenants, McMahon and Berry, were all my particular friends; I have ever had the utmost confidence in their valour, and I was not deceived. Spencer was wounded in the head—he exhorted his men to fight valiantly—he was shot through both thighs, and fell; still continuing to encourage them—he was raised up, and received a ball through his body, which put an immediate end to his existence. Warwick was shot immediately through the body; being taken to the surgery to be dressed, as soon as it was over, (being a man of great bodily vigour, and still able to walk,) he insisted upon going back to head his company, although it was evident that he had but a few hours to live.

“All these gentlemen, sir, Captain Baen excepted, have left wives, and five of them large families of children; this is the case too, with many of the privates among the militia, who fell in the action, or who have died since of their wounds. Will the bounty of their country be withheld from their helpless orphans—many of whom will be in the most destitute condition, and perhaps want even the necessities of life?

“With respect to the number of Indians that were engaged against us, I am possessed of no data, by which I can form a correct statement. It must, however, have been considerable, and perhaps not much inferior to our own; which, deducting the dragoons, who were unable to do us much service, was very little above seven hundred, non-commissioned officers and pri-

vates; I am convinced there were at least six hundred. The Prophet had, three weeks before, 450 of his own proper followers. I am induced to believe, that he was joined by a number of the lawless vagabonds who live on the Illinois river, as large trails were seen coming from that direction. Indeed, I shall not be surprised to find, that some of those who professed the warmest friendship for us, were arrayed against us—'tis certain that one of this description came out from town, and spoke to me, the night before the action. The Potawatomie chief, whom I mentioned to have been wounded and taken prisoner, in my letter of the 8th instant, I left on the battle ground, after having taken all the care of him in my power; I requested him to inform those of his own tribe, who had joined the Prophet, and the Kickapoos, and Winebagoes, that if they would immediately abandon the Prophet, and return to their own tribes, their past conduct would be forgiven; and that we would treat them as we formerly had done. He assured me that he would do so, and that there was no doubt of their compliance. Indeed, he said, that he was certain that they would put the Prophet to death. I think upon the whole, that there will be no farther hostilities; but of this, I shall be enabled to give you some more certain information in a few days.

"The troops left the battle ground on the 9th instant—it took every wagon to transport the wounded. We managed, however, to bring off the public property; although, almost all the private baggage of the officers were necessarily destroyed.

"It may, perhaps be imagined, sir, that some means might have been adopted, to have made a more early discovery of the approach of the enemy to our camp, the morning of the 7th instant; but if I had employed two-thirds of the army, as outposts, it would have been ineffectual: the Indians in such a night, would have found means to have passed between them: placed in the situation that we were, there is no other mode of avoiding a surprise, than by a chain of sentinels, so close together, that the enemy cannot pass between without discovery; and having the army in such readiness, that they can get to their alarmposts at a moment's warning. Our troops could not have been better prepared than they were, unless they had

been kept under arms the whole night, as they lay with their accoutrements on, and their arms by their sides; and, the moment they were up, they were at their posts. If the sentinels and the guards had done their duty, even the troops on the left flank would have been prepared to receive the Indians.

"I have the honour, to enclose to you, a correct return of our killed and wounded. The wounded suffered very much before their arrival here, but they are now comfortably fixed, and every attention has been, and shall continue to be paid to them. Doctor Foster, is not only possessed of great professional merit, but is, moreover, a man of feeling and honour.

"I am convinced, sir, that the Indians lost many more than we did—they left from thirty-six to forty on the field. They were seen to take off, not only the wounded, but the dead. An Indian, that was killed and scalped, in the beginning of the action by one of our men, was found in a house in the town; several others were also found in the houses, and many graves which were fresh dug; one of them was opened, and found to contain three dead bodies.

"Our infantry used principally cartridges, containing twelve buck-shot, which were admirably calculated for a night action.

"I have before informed you, sir, that Colonel Miller was prevented by illness, from going on the expedition—he rendered essential service in the command of fort Harrison; he is an officer of great merit.

"There are so many circumstances which it is important for you to know, respecting the situation of this country, that I have thought it best to commit this despatch to my aid-de-camp, Major Taylor, who will have the honour of delivering it to you, and who will be able to give you more satisfaction, than I could do by writing. Major Taylor, (who is also one of our supreme judges,) is a man of integrity and honour, and you may rely upon any statements he may make.

"With the highest respect, &c. &c.

"WILLIAM HENRY HARRISON.

"P. S. Not a man of ours was taken prisoner, and of three scalps which were taken, two of them were recovered.

"*The hon. W. EUSTIS, Secretary at War.*"

The following is the examination alluded to:

"We admit as a fact, *for the present*, that the Indians of Tippecanoe had commenced the war, and that the object of the expedition was to terminate it, by battle, or by treaty. Because Governor Harrison says in his letter to Governor Scott: 'The orders of the government with regard to the expedition, evinces as much wisdom, as humanity. It was determined to protect its citizens, but if possible to spare the effusion of human blood.' Not the blood of citizens only. Again he says: 'I certainly did not understand my instructions to mean, that I should jeopardize the safety of the troops, by endeavouring to bring about accommodation, without fighting.' That the government had been taught, to believe the expedition necessary, *by Governor Harrison's representations*, no doubt need be entertained. And that he was vested with ample powers, to effect its object, whether of war, or peace, we now have from his own pen—having always a due regard to the safety of the troops. To whom then, is the deficiency of the means, to the end, to be ascribed?—Certainly to Governor Harrison. He possessed the means of knowing certainly, the force of the Prophet's town—the number of his warriors—and the probable amount of his auxiliaries. Taking the number 450, stated by Governor Harrison to be the Prophet's force—and we have no doubt this is the full extent of it, then the army raised by Governor Harrison, 13 or 1400, was very abundant for the service; calculating upon all the contingent aid, which in the general pacific disposition of the other Indians, he could reasonably anticipate. And we can but *smile with contempt*, on the vulgar garrulity of the commander in chief of this army, (and one more gallant in proportion to its discipline, never was commanded,) when he says that the effusion of human blood, was not prevented—'was owing to those who opposed the expedition to the utmost of their power, and by whom exertions in circulating every falsehood that malice and villany could invent, the militia were prevented from turning out; and instead of a force from 12 to 1500 men, which I expected to have had, I was obliged to march from fort Harrison, with less than 800;



my personal enemies having united with the British agents in representing that the expedition was entirely useless, &c. Nor is it for us to reconcile the CONTRADICTIONS, which we find in the writing of the consummate general, upon the subject of his forces. In his letter to his dear General Scott, he states his own force at 950, (including some riflemen in the rear,) which he should march against the Prophet's 450 men. So confident was he of the competency of his force, that he spoke of leaving a part.

"In his official letter of the 18th December, stating his own force, he says, deducting the dragoons the army was but little over 700 men. What prevarication!—what tergiversation! for a great man!!

"Well, but the dragoons made a part of the army—and are stated in the same letter, to consist of 'two troops, in the aggregate, *above* sixty men; and Captain Parke's troop, which was larger than the other two.' And which we may fairly set down from 130 to 140, or 150 dragoons—making his army more than 860 men. But we say, it is not for us to reconcile contradictions: we leave that to the GENERAL! That he knew the Indians of the Prophet's town were hostile, must be admitted, or the whole expedition must be considered *a most wanton, and unjustifiable invasion of a weak, and peaceable neighbor*. That he knew they inhabited a town, which might be fortified with palisades, and breastworks, so as to resist muskets, and rifles, is only conceding to him the common capacity, of a common man; and this we never will deny him.

"To account for his not taking a fieldpiece, or two, with him, is to suppose a want of foresight, or a degree of confidence, compatible neither with the safety, nor best disposition of the troops: or what is wholly inadmissible, that the government could not furnish them.

"We now consider the governor as having completed his files, and commenced his march to the Prophet's town, with an army not of barely 1200 men, or less than 1200, as he would insinuate in the statement previously quoted, from his letter to

Governor Scott, but of from 13 to 1400 men, as we believe\*; if he took less than 800 to battle, he is to account for the balance. We will not however examine his line of march. The Indians did not waylay him, and he surmounted all the logs, creeks, and hills, from Vincennes to Tippecanoe, *without surprise!!!*

"Some circumstances, much indeed relied on by him, to prove the hostility of his enemy, we cannot omit to mention.

"In the first place, they wounded one of his sentinels; in the next, they repeatedly shewed themselves individually, but would not confer or be spoken with; again, when he sent his spy, and interpreter, to hold a conference, they avoided him, and manifested a disposition to cut him off from the army; and finally, Major Daveiss reported on his approach to the town, a series of insolent, and hostile acts, on the part of the Indians.

"Well then; it is in the face of an enemy, that we look for the *penetration* and *skill*, of a GENERAL. What does our governor-general, whose name is flaired, and blaired about as a modern Hannibal? Why truly—after having determined to encamp on a prairie, one and a half mile, or less, from town, where the army had been drawn up in order of battle, without seeing an enemy, as we understand him, he is diverted from his object, on the report of the Indian insolence, and hostility. Not, we presume, really to give them battle—not to attack the town—because he says in one of his letters, 'that if he had attacked the town, success was doubtful—and again, that if he had not been attacked when he was, he was determined to have attacked the town the next night; if the Indians had not acceded to his terms, and which he was confident they would have rejected.' For what then did he relinquish the camp he had begun to trace in the prairie, and march toward the Indian town? Why, doubtless, to read to the Prophet and his warriors,

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\*"It is to be remarked, that a Mr. Armstrong, who left fort Harrison on the 13th of October, stated the army to consist of 1500 men—a letter from an officer of the army on the Wabash, probably written at fort Harrison, stated the same army at 1400, or upwards. We should like to see the pay-roll—and doubt not its numbers correspond, with the latter accounts."

which he could not get them to hear before, some loving message of the president, in the nature of a *riot act*, ordering them to disperse, to abandon their town, and save their lives. It is true this is not assigned as the reason, nor is there any object for the movement designated, unless it was to encamp on the Wabash. But what then? After four hundred yards' march, three Indians approach, the army is halted, and the general brought to parley. And here he avows that he had no intention of attacking, unless he should know that they would not comply with the demands he had to make. A promise is made to renew the conference the next day; the general again recommences his march, is again stopped, by fifty or sixty Indians, ordering him with a loud voice to halt; upon which he tells them he only wants ground to encamp on, where there is wood and water—which the Indians very *kindly* point out to him, and he as *judiciously accepts*, upon the report of two of his officers. But when he comes to the ground, behold it is just such as the Indians would choose to place an enemy on, whom they intended to surprise, and destroy. Says this *cautious and circum-spect* general, who had conducted the army with the most perfect safety, through a country, over which thousands of savages had travelled, thousands of times, but in which there was not then any, the ground destined for the encampment, 'afforded great facility to the approach of savages.' And he then proceeds to verify his observation by a particular description. 'It was (says he) a piece of dry oak land, rising about ten feet above the level of a marshy prairie in front, (towards the Indian town,) and nearly twice that height above a similar prairie in the rear, through which and near to this bank, ran a small stream, clothed with willows, and other brushwood. Towards the left flank, this bench of high land widened considerably, but became gradually narrow in the opposite direction, and at the distance of one hundred and fifty yards from the right flank, terminated in an abrupt point.' If the God, whom the Indians adore in war, had made a piece of ground for the camp of an enemy, it was this; and to this his worshippers directed Gen. Harrison. And General Harrison, seeing the kind, and quality

of the ground, and that 'it afforded great facility to the approach of savages,' the very enemy he had to oppose, most *judiciously*, and like General Harrison, quietly encamps on the ground, without trench or palisade.

"To what purpose is it that General Harrison makes such display of his order of battle, and of his camp? That here he placed one company, and there another? That this was in front, and that in flank? Why is there such a parade of tithes of mint, cumin, hyssop, and rosemary, 'when the weightier matters of the law were neglected?' Is it thus, that little minds seek refuge from scrutiny? Does Governor Harrison expect to escape detection, behind the smoke which he thus raises? We shall not say it was unpardonable in Governor Harrison, to take the ground chosen for his camp by his enemy, when he came to see that it was made for the purpose of the enemy—because in these times, any thing can be pardoned, that can connect itself with the party in power; but we will say, that in our opinion, a greater *faux pax* could not have been committed, as the circumstance was no way turned to advantage, for the troops of the general, or against the enemy; either by fortification, or moving detachments after dark, to fall upon the rear of the enemy, in case of attack—nor even by keeping half the army under arms, by regular routine, through the night.

"But General Harrison, did not expect to be attacked that night. And why did he entertain an opinion of security, which we admit any ordinary man, or old woman, incapable of comparing facts and circumstances, might have entertained. Was not the expedition predicated upon the hostility of the Indians? Has not General Harrison, as before recited, taken much pains to demonstrate their hostility? Was he not an invader of their territory? Did not the Indians know that their fate depended upon that night? and that success, or submission, with or without a battle, was the only alternative? Did not Governor Harrison know, that a defect of strength, seeks its compensation in stratagem? And does not stratagem belong to war in general, and to the Indians in particular? Why then, if it is true that the Indians were hostile, is it, that Governor Harri-

son did not expect an attack? Why, consult his official despatch—it gives the reason. He had told the Indians, that he did not mean to attack them that day—and again, that he wanted a camp, and would not attack them until they had refused his terms, about which they would confer the next day. What those terms were, we have not seen, or heard. But Governor-General Harrison, has himself said, he was confident they would not have been accepted. And this speaks, that they were such, as ought not to have been offered.

“What then is the general’s apology for his conduct, in the face of the enemy; for taking that particular piece of ground; for encamping his men on it without fortification; for permitting the army to sleep—in a word, for not guarding against surprise? Why truly, he did not expect to be attacked; and all precaution to that end, was useless labour, time thrown away. And this man! would be thought a general! and there are simpletons, weak enough to call him a CONSUMMATE GENERAL!! But the Indians made other calculations. And they surprised his camp, with forces much inferior in point of number, and killed, and wounded, one hundred and eighty-eight of his men. Who, now under the conduct of a *real general*, would be at home, the comfort of their families; and some of them, the ornament of their country.

“To prove that the camp was surprised, and to detail the other exploits of this most *consummate General Harrison!* shall be the business of one, or two subsequent papers.”

“Pursuing our observations on the conduct of this general, the next thing to be noticed is, that he *so* encamped, and guarded the army, as to subject it to surprise. It was not only exposed to surprise, but *actually surprised*.

“We give this *great general* no credit for the disguise, or artifice, with which he has lately attempted, or may hereafter attempt, to conceal the fact, of SURPRISE. A fact of the first importance in the practical skill, and consequently to the real character, of a commander in chief. It is true, and we readily admit, that when men enter into an army, they consent to fight and to die, whenever it is necessary. But on the other hand,

their commandant is *pledged*, never to expose them unnecessarily, and above all things, never voluntarily to place them in a condition to be surprised. And he who foregoes this obligation as a commander in chief, is unworthy of command, unworthy of the title of general!

"But we have said the camp was *surprised*; and we are now to collect the evidence; for we disdain to make an assertion of so much importance, without satisfactory proof of its verity. If there was a man in existence who was interested to mitigate and extenuate the fact, and its evidence, that man was Governor Harrison; because he stood responsible: Yet it is upon his testimony nevertheless, that we will rest our assertion.

"The first evidence of the *surprise* is to be found in that most singular and extraordinary despatch, Governor Harrison's first official communication after the battle. Says he, (speaking of the Prophet,) 'he attacked me at half past four o'clock in the morning so suddenly, that the Indians were in the camp before many of the men could get out of their tents. A little confusion for a short time prevailed, but aided by the great exertions of the officers, I was soon enabled to form the men in order.'— Now this statement, notwithstanding its *egotism*, is evidence complete, *of a surprise*. In the letter of Governor Harrison to Governor Scott, of the 13th December, the author, under the reproach of being *surprised*, endeavours to shew that he was not; or rather, that the *whole army was not completely surprised*; and proceeds to state that the idea of surprise was incorrect. It is nevertheless certain from his *own* statement, that the camp was surprised, and that it is a mere evasion of the truth, to make the *whole army*, and *complete surprise*, the points on which he would palliate the charge. Because he admits that the two companies commanded by Barton and Geiger, forming the left angle of the camp, were attacked before they were ready. Now this is precisely where the attack was made; and had every part of the camp been attacked at the same time, every part would have been equally surprised. But owing to the small number, and want of skill in the enemy, and to the prompt

exertion of the officers, the men were awoke, roused, and got into some order in other parts of the line before those parts were attacked; and some parts of the camp, were never attacked. Now it would be just as easy for Governor Harrison to prove, that there was no attack, as to prove that the camp was not surprised: for if the suspense of the attack upon some parts of the camp, until the men could be got out of their tents, proves they were not surprised, so the total omission to attack other parts of the camp, will prove that there was no battle. But the reverse of both is equally true, the camp was surprised; we shall take no trouble to prove *there was fighting*. But again; if there was no *surprise*, how came there to be confusion at first? how came the Indians to penetrate to the centre of the camp? how came some men to be killed, and others wounded, in their tents, or before the fires? And yet these facts have been admitted.

"In Governor Harrison's second official letter, dated the 18th of November, stating that the attack began on the left flank, he says that 'the first notice which the troops of that flank had of the danger, was from the yells of the savages, within a short distance of the line—but even under those circumstances, the men were not wanting to themselves, on to the occasion.' In other words, they did not lie, and permit themselves to be tomahawked. 'Such of them (says he) as were *awake*, or were *easily awakened*, seized their arms, and took their stations; others who were tardy, had to contend with their enemy in the doors of their tents.' Does not this confess the surprise? What is it to be surprised by an enemy, but to be attacked, unexpectedly, and unprepared? Then unexpecting, and unprepared to receive the enemy, were the troops of the most consummate General Harrison, when attacked on the morning of the 7th of November last. We do not mean to aggravate this circumstance. A bare recital of the facts, that GENERAL HARRISON, chose the ground for his camp which had been pointed out to him by his invaded enemy—and that he encamped his men on it, after observing its facilities to the approach of that enemy, without the precautions proper to divert the stratagem from himself,

upon the heads of the savages, is enough to shew that he is a mere *militia general*, fabricated out of materials for the chimney-corner—not even fit to fight Indians, though the weakest, and most unskilful of all our enemies. To be surprised after the occurrence of the other circumstances related, is no *surprise* indeed! but a thing to have been expected.

“Suppose the Indians had been numerous enough to have attacked every part of the camp—suppose they had possessed skill sufficient to have made that attack at all points at the same time—and suppose that instead of the yell, they had been silent, what might not have been the effect? What it would have been, notwithstanding all the vigilance of the officers, which enabled ‘I’ to get the men in order, we could hardly mistake in predicting; half the men might have been killed, before they were awakened.

“Then we perceive most clearly and distinctly, that to the weakness, and want of skill in the enemy—to the native bravery of the troops, and to the vigilance of the officers, exclusive of ‘I,’ is owing the failure of the attack made on the 7th November, by the Indians. That the victory was finally gained, was but a consequence of the same circumstances: for the troops, once fairly awake and standing, would defend themselves, and could but beat back the enemy. It was however, half an hour (as it has been stated to us) before the lines were fully recovered, and formed. Until the general mounted his horse, he does not tell us of any thing he did. Well, now we have the troops awake, and the general on horseback, let us trace this great ‘I’ throughout the camp, and mark his step *militaire*. The attack it is to be remembered, was made on Barton’s and Geiger’s companies, which formed the left angle of the rear line. So soon as ‘I’ mounted his horse, but when that was does not appear, he rode to the angle that was attacked. That this might be like a soldier, we shall admit; that it was like a *general in chief*, we may question. Because the lines might be attacked in several different, and distant points, at the same time; and a general, especially in a night attack, should be in



a known situation, and prepared to dispense his orders to every point. Be this as it may, when 'I' came to the place first attacked, 'he found Barton's company had suffered severely, and Geiger's left, entirely broken.' We presume they never had been formed; or else a considerable lapse of time had taken place after the attack. And we presume further, that 'I' really was ignorant of what was going on in other parts of the line, and that the darkness of the night, prevented his seeing how, or when, the men formed: which, as in all such cases, must have been done under the care of the immediate officers. But 'I' immediately ordered Cook's company, and the company under the command of Lieutenant Peters, to be brought up from the centre of the rear line, and formed across the angle in support of Barton's and Geiger's: that is, these companies were ordered from ground, as 'I' says, more defensible, had any body been left to defend it, and placed in a situation, where they might be killed, without seeing their enemy; or compelled to fire through the files of Barton's and Geiger's companies, and thus, it being night, kill as many of them as of the enemy. This truly was generalship!!!

"But, as if the labours and fatigues of 'I' were never to cease, his attention was then engaged by a heavy firing, upon the left of the front line; that is, on the extreme opposite point of the camp, where were stationed the small company of United States' riflemen, then armed with muskets, and the companies of Baen, Snelling, and Prescott.' Well, what does 'I'? Why, 'I' found Major Daveiss forming the dragoons, in the rear of these companies'—these dragoons, being a standing corps of reserve, and occupying their proper place, as such—'I' 'understanding that the heaviest part of the enemy's fire proceeded from some trees fifteen or twenty spaces (or paces) in front of those companies, 'I' directed the major to dislodge them with a part of the dragoons.' Over this part of the conduct of 'I,' we should have been glad he had cast more light; we should have been pleased to have heard, what appeared to be the number of trees from which the enemy's fire proceeded; we are anxious to

have been told what was the number of dragoons ordered; especially, when we find this account of the orders of 'I' succeeded by the following reflections: 'Unfortunately, the major's gallantry determined him to execute the order with a smaller force than was sufficient, which enabled the enemy to avoid him in front, and attack his flanks. The major was mortally wounded, and his party driven back. The Indians were, however, immediately and gallantly dislodged, from their advantageous position, by Captain Snelling, at the head of his company.' And is it in this the GENERAL appears? Who ever heard, till General 'I' gave the order here detailed by him, that dismounted dragoons, armed with swords, and pistols in belt, had been ordered to take the front of *foot soldiers*, armed with *muskets and bayonets*, and to dislodge an enemy fifteen or twenty paces in front of those foot soldiers so armed? We presume to say, it is unmilitary, and unprecedented. This *same general* has told the public that this enemy was armed with guns, tomahawks, war-clubs, and spears. And yet, he ordered Major Daveiss, with a part of his dismounted dragoons, to step in between the musket and bayonet, and that enemy, in order that such enemy, being driven from its stand behind the trees, might no longer annoy those brave troops; who upon the fall of Major Daveiss, gallantly applied the musket, and bayonet, to their proper use, and drove the enemy from their position.

"But having undertaken to trace 'I' through the camp, our attention is carried to his next statement. Says he: 'In the course of a few minutes after the commencement of the attack, the fire extended along the left flank, the whole of the front; the right flank, and part of the rear line.' Fortunately, there was no attack upon that part of the rear line, from which he had withdrawn the two companies; what other parts were attacked, we may conjecture! 'Upon Spencer's mounted riflemen, and the right of Warwick's company, which was posted on the right of the rear line, it was excessively severe,' &c. At this place, we can but take time to inquire, if this general attack succeeded the first in a few minutes, how did it happen

that the attention of General 'I,' after the dispositions stated to have been made by him on the left flank, was so *particularly* attracted by the firing on the right flank? to which he next posted, and where, as usual, he did wonders! Indeed, we can but marvel, that 'I' was not as much affected by the firing on the right of the rear line, where Spencer and Warwick were posted. It must be confessed, that if there is no confusion of ideas, there is at least a great want of precision, in the account given by this general, of his own great exploits. Connected with the description of an almost general engagement, we next perceive, the general discovers Captain Robb's company had left its ground, for the centre of the camp. Now, what the general did with Robb's company, he does not tell—but instead of ordering it back to reoccupy the ground it had left, he ordered the vacancy to be filled by Prescott's company; which company, but a little before, was engaged on the left of the front line; yet, says he, 'I had reinforced every part of the line that had suffered much, and as soon as the approach of morning had discovered itself, I withdrew from the front line, Snelling's, Posey's, and Scott's, and from the rear line, Wilson's companies, and drew them up upon the left flank; and at the same time, I ordered Cook's and Baen's companies, the former from the rear, and the latter from the front line, to reinforce the right flank.'

"Never perhaps, since the days of Major Sturgeson, in the Mayor of Garrat, the evolutions of a militia regiment, mentioned in Salmagundi, or the manœuvres of the renowned governor of New York, detailed by Knickerbocker, was there such *marchings* and *countermarchings* performed.

"Thus have we traced General 'I' through the account; rendered by himself, of the action on the Wabash. We invite examination; for we have endeavoured to be correct; if possible, to find in what it is, that Governor Harrison has shown in any thing, one trait of military capacity not common to every man in his army with a commission equal to that of captain—and are forced to confess that our research has been vain.

"That General Harrison was busy, we have seen; that he ran

hither and thither, he has told us; that the officers generally did their duty, and that the men were brave, we have no doubt: and greatly do we regret that such officers, and such men were not commanded by a general worthy of them—a general who would have conducted them to battle by daylight, or kept them from being *surprised* by night!!!

“In Governor Harrison’s letter to Governor Scott, he expresses himself pleased that his army was attacked in the night; it was what he wanted; because it afforded a better opportunity for killing Indians, than when the attack was by day. It seems to us that this idea is too weak, and puerile for any one but *General Harrison*. We shall take but little trouble to expose it. We can, however, but contrast it with the opinion of the same *great* general, expressed in his letter of the 18th November to the secretary of war; he says, ‘My great object was to keep the lines entire, to prevent the enemy from breaking into the camp until daylight, which should enable me to make a general and effectual charge.’ Thus do we find *this great man* at variance with himself. At one time, in effect confessing that the *night attack* had placed him merely on the defensive, rendered his cavalry useless, and a general and effectual charge impracticable; and that he waited only for daylight, to exert his force, and secure the victory. At another time, he is for the night attack of the enemy; when the cavalry cannot act, and when no ulterior movement could be made with advantage—at least, none was made by General Harrison.

“But even as to the article of killing, we had thought that the night favoured the assailants, and especially the Indians—on their own ground too, with which they were well acquainted, in addition to their greater facility of concealment, and better sight than white men in the night. But so deranged appear the ideas of Governor Harrison, that he has said if the Indians had not attacked him, he had determined to attack them the next night; relying, we presume, alone upon the advantage which assailants have of their enemy in the night attack. How then could he be pleased that the attack was made on his camp *in the night*?

"Were we, indeed, to examine and contrast all which this *mighty man of words* has written, we might suspect the sanity of his intellects; we never could respect him for judgment, or candour. But one reflection, and we are done with him for the present.

"What was the killing a few Indians, to the loss of so many valuable citizens? who, but that Governor Harrison wants the qualities and qualifications of a GENERAL, might have been saved; and yet have been lost in one fatal night, to their families and country forever!

"If Governor Harrison invaded the Indian country, and the Prophet's town, uncertain whether he would fight or not, he should have established a strong and fortified camp, at a convenient distance from the town, where he should have required their conferences; and from which, if necessary, he might have readily made his attack. In such a camp, his army would have been safe, as well by night as by day. And although there might not have been killed as many Indians, he would not have merited the execration of the surviving friends of those heroes, whom he has lost.

"Once more we will go back to the camp of this *consummate general*, Ego; Harrison. For it is by the camp of a general, as much as any other circumstance, that he is known. When Phyrrius saw the camp of the Romans, *entrenched and fortified*, he could but exclaim to his attendants: 'Truly these are not barbarians.' But what would he have said, had he seen the camp of the renowned General Harrison? 'Verily, this militia have no general.' In front and rear of the camp, a wet prairie, impracticable for horse, and just calculated for the approach or retreat of the Indian enemy.

"Accordingly, after the *general* had ordered Snelling's, Posey's, Scott's and Wilson's companies, to reinforce the left flank; and Cook's, and Baen's companies, to reinforce the right flank; Major Wells, not knowing the intentions of the general, (he choosing, we presume, to command every where in person, and to do the duty which might have been done by inferior officers, and before he could form the cavalry, after day-

light, to support the intended charge,) proceeded to make the charge, and drove the Indians at the point of the bayonet, into—a—swamp; where neither foot, nor horse, could follow them. Thus ended the battle on the left. On the right, to the rest of the force, was added the riflemen; with these, the enemy was charged, and put to flight. ‘A favourable opportunity, (says the general,) was here offered to pursue the enemy with dragoons, *but being engaged at that time on the other flank*, I did not observe it until?—when?—*‘it was too late!’*—O fie! O fie! Was ever poor general so unfortunate! When the charge was made on the left flank, he was not there; he was forming the dragoons. When the charge was afterwards made on the right flank, by the infantry, he was not there; he was on the left flank. A fine opportunity occurred, for charging the enemy with the dragoons; but it was not observed until it was too late!! Was there ever so consummate a general? Major Sturgeon indeed! why we protest that Major Sturgeon is no more to GENERAL HARRISON, than a duck is to a goose!!!

“It is of no importance, to observe, that Governor Harrison, is a little, selfish, intriguing, *busybody*! But when he is exalted into the GENERAL, and puffed, and blown into our faces, as possessing military skill in an eminent degree, we can but ask, What has he done? Where did he shew his skill? Was it in the choice of his camp? Was it by his sagacity in penetrating the design of the enemy? Was it in making ulterior movements to circumvent them? Was it in running hither and thither through the camp? Was it in taking upon himself the command of companies, divisions, and platoons? Was it in omitting to have the dragoons ready to charge, or to pursue the enemy?—But stop; the dragoons could not charge in the swamps, with which he had fortified his camp.—Enough. We have said enough to set the reader to thinking; that is what we wanted.”

It is pleasant to bury and forget the faults and foibles of an old man's life, in the remembrance of an act of real merit, at the end of his public service. This reflection is the result of comparison, and is intended to express approbation of the docu-

ment presented to the legislature by Governor Scott, on the 3d of December, 1811.

The substance of which, the whole being too long for insertion, will close the second volume of the history of Kentucky. It follows:

"We live, gentlemen, in times of no ordinary import; all our wisdom and virtue may be required for our own preservation."

"War seems to lower over our horizon." Alluding to the prospects in the east, no less than in the west.

"Justice as well as policy, dictated the pacific course our government has endeavoured to pursue." But "unprovoked and incessant injuries from both Britain and France, with a view to involve us in their wars, has been the consequence."

Force, or what is worse, submission, seems the only alternative left us, by these hostile rivals.

If the spirit of the country is so humiliated and debased, as to submit, then indeed we are not worthy to be called free—much less the only free nation on the earth.

Both the great belligerents have injured us; we have a right to compensation from each. In regulating the relations between themselves, we have nothing to do. Nor should our inclinations know either British or French.

The president has apprized congress, that the nation should assume an attitude of defence. Let us therefore be prepared for the rencounter.

The energies of our country, if properly called out, and employed, are more than adequate to our protection, against every enemy. But we have too great fondness for indulgence, and for power—too great horror of privation—too much love of foreign commerce.

But, as the health of the body depends upon that of the members, we should more immediately turn our attention to the affairs of our state—improve our resources, and cultivate the means within our reach, without grasping after those beyond it.

Let us be prepared and ready to assist others, if we expect to be assisted by them.

The preservation of our union, the great anchor of our safety, requires that the good of all should be consulted, and promoted. The wealth of a nation is the product of its industry. The fertility of our soil, calls us to agriculture; the exchange of our productions of the land, with internal manufactures, always safe, should form the basis of American commerce. The less we are dependent on other nations, the more they will respect us; and the less shall we be annoyed by them.

People are the strength of a nation. Facility of subsistence will always multiply them. Perhaps no age or country has witnessed such rapid advances, in both population and improvement, as our own.

The militia, a subject often recalled to your recollections, never more demanded your attention. I have seen with pleasure, an improvement in the discipline and military appearance of the men. There is a pride allied to honour; it is the soul of a soldier; it cheers him in toils—nerves him in danger—and in the path of his duty, leads him to victory, or to death, with equal magnanimity. The laws should cherish this pride; the first step to which, is the procurement of good officers; the next, the habit of obedience. Arms are indispensable. Once more permit me to recommend an armory. A beginning should be made; we have resources; we have credit; money might be borrowed; the sale of vacant land might soon replace it. To preserve our prosperous state, we must be strong: to maintain liberty, we must be able to defend it. Nor should we forget, that to maintain our rights, we should understand them. Education then becomes expedient, as the handmaid to information—the only substitute for ignorance. Knowledge is equally necessary in both military, and civil affairs. Every country produces talents sufficient for every purpose, both private and public, if they are but duly cultivated.

Then how important are schools, both civil and military! These are important subjects, gentlemen, which to mention, is to recommend to your aid—there is, however, yet another, still more important; because it is of every day's use; it is the interest and right of every man; it is the administration of



justice. There is a tardiness in its progress, which bespeaks something much amiss in the structure, or organization of the courts; or in both.

"A celebrated writer of English history, has observed, that in that country, the king, lords, and commons; the army, navy, and revenue, are all for the support of the twelve judges. Meaning by this, that the whole machinery of government is intended for the correct and uninterrupted administration of the laws, *and that this can only be done through the judges.*

"The judiciary of that country, is certainly the cause why it is more free than any other, but our own. Their judges are men of the first learning and talents; the tenure of their offices, as well as the receipt of their salaries, *are dependent on their good behaviour, alone;* and their compensation is so ample, as to require no other fortune for their support, &c. The effect of such arrangement, has been the salvation of the nation from entire despotism. I would not be understood as recommending equal salaries, but such as are both competent and liberal.

"Continued habits of study and reflection, are required for this station, beyond every other. And this holds true, most especially, in the court of the last resort; whose decisions, to a great extent, must form the law of the land."

The tardy administration of justice, and especially in chancery, is again the subject of remark; and proper for revision—as is also, the criminal code. There is too much lenity, for either reform, or punishment.

Allusion is made to the struggle of the southern patriots, with becoming sympathy.

And with expressions of gratitude, for the abundant blessings enjoyed by the nation, and the state, encourages a practice of the necessary means to preserve them.

And next, after a very lengthy address, which is here greatly condensed, he makes his valedictory, and retires, like a patriot, and a sage.







